WILLIAM H. JENNINGS;

WATER LAWYER

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TABLE OF CONTENTS

INTRODUCTION

William Harold Jennings, attorney and water law expert was born in San Diego, California, January 20, 1899. After attending the University of California at Berkeley, he received his law degree from the Los Angeles College of Law and, in 1930, was admitted to the California State Bar. Since that time he has served as a member of the legislative counsel of California (1931), as city attorney for La Mesa (1934), as general counsel for the La Mesa Lemon Grove and Spring Valley Irrigation District (1936), as counsel for the Ramona Irrigation District, the Steel Canyon Irrigation District, the River View Farms Mutual Water Company, the Julian Mutual Water Company and La Mesa Planning Commission, and as a member of the board of directors and secretary of the San Diego Water Authority, (1944-48). He also served on the Water Lawyers Committee (1957), formed by Governor Goodwin Knight to prepare legislation for resolving the north-south controversy regarding the California Water Plan.

As a lifetime resident of San Diego intimately involved in the area's water development problems, Jennings' candid and judicious narrative offers a particularly luminous picture of the events leading to the construction of the San Diego

Aquaduct, the formation of the San Diego Water Authority and its subsequent relationship with the Metropolitan Water District. His thorough knowledge of state water development is reflected in his commentaries on the California Water Plan, his remarks on the Southwest Regional Water Plan and his historical summary of the evolution of California state water law.

Because of his role in the negotiation of the Mexican Water Treaty, on the request of the editor, Jennings added the final chapter to the manuscript while he was emending the original transcript. These comments were not tape-recorded and are presented as he wrote them.

The interview was conducted under the auspices of the Water Resources Center at UCLA as one of a series dealing with the history of water development in California and the Southwest. Tom Hall, the interviewer, made the recordings with Jennings in May and June of 1965. The transcript was edited by Donald J. Schippers who also assisted Mrs. Adelaide Tusler in preparing the index.

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CHAPTER I

FAMILY BACKGROUND; EDUCATION

JENNINGS: I was one of a family of eight children born to Fred M. Jennings and Ida B. Oral Jennings. They came to California around 1887 and settled on the little area of Point Loma called Roseville. Of the eight children, four of us were born in California. I was born on Point Loma in 1899.

My father had a farming background and came to California with the idea of developing farm property and settling here; he had originally come from Ohio. From Ohio, he went to western Kansas, and then from western Kansas, he came to California. In Ohio he was used to plenty of water, but in western Kansas he had practically none at all. So when he came to California, he was conscious of the necessity of adequate water for farming operations and, in his career, he purchased and developed farms, and, after getting them into production and good shape, he sold them. That's the way the family was used to living.

We lived in a number of places in San Diego County and each farm that he bought, he bought with a view to what

water resources could be developed. I was still young, but I became conscious of the fact that, in San Diego County, we had nothing but desert unless we had an adequate water supply.

The first farm I can remember my father buying was a 300-acre parcel of land about eighteen miles east of the city of San Diego in an area now called Lakeside. This was in 1906. There was a stream that ran nearly the length of the farm. About half of the land bordered the stream and a fairly good well-field could be developed there. The stream was a typical San Diego County stream. It ran pretty strong in the wintertime, which we used to think of as normal during the rainy season, but about the first of July it would dry up. It would stay dry until the winter rains started again the next November.

The impressive thing to some about this ranch was that the old San Diego Flume Company's wooden flume ran through it. This flume was quite a unique thing in San Diego County. This British company came over here in the '80's and acquired what they thought were good water rights on the San Diego River. They built the Cuyamaca Dam at the headwaters of the San Diego River about fifty miles from San Diego to conserve the water runoff and ran the water down the San Diego River to a point four or five miles up from where our ranch was located. There, they diverted the water from the river into a wooden flume that

was built on contours so that it flowed by gravity from the point of take-off down to La Mesa. From there, the water ran through pipelines into the City of San Diego. This was one of the main water supplies of the City of San Diego and the eastern portion of the county.

The flume was about five feet wide and about two feet high. The side boards were about two feet high, and it had a stream of water that ran about thirty cubic feet per second, which is a very good stream of water. At times when something happened, the flume went out of business for a little while, but that was seldom. The flume went for a mile and a half through the Lakeside ranch where we lived, and it was a rickety-appearing wooden structure. Because it was entirely a gravity flow, it was built on contours and it went up every canyon and back down the other side of the canyon except where we had a real long canyon reach. At those places, the builders had built a skeleton trestle which carried the flume across to the other side. The water was always deep enough in the flume, and it was running at a rate so you could launch a small raft in it and run it downhill. All the kids in the country that lived along the flume spent a great deal of their idle time either riding in the flume or swimming in the water.

The water was used in the back country for irrigation,

and our ranch had a three miner's-inch* water right from the flume. That was a continuous flow of water, and in order to make that into an adjunct that would help out the well basin, my father built a dam across one of the canyons on our ranch, downstream from the flume and upstream from our irrigated areas. This dam covered about a half an acre in surface, I guess, and it was another swell place to swim and ride around on in a rowboat and enjoy.

This operation ended, as far as our ranch was concerned, in 1916, when we had one of the historic flood flows in San Diego County, and it washed out nearly everything in the county including our dam and practically all of the surface land in our lower fields. They were washed out and went downstream to some other ranch. From then on, we made little use of the flume. In fact, a few years later, we sold the ranch.

We had another property up in the mountains near Julian in the Volcan Mountains where there were nearly continual flowing streams. Their source was the mountain snows. There was a 5,000-foot mountain on that ranch, and my father built a sawmill using water power from about a thousand-foot drop from up on the top of the mountain down to where the mill was built. He again built a dam by himself and for several years he operated this sawmill from

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*A flow of water usually equals 1.5 cubic feet per minute.

this water-power operation. He sold lumber and built all the improvements on our ranch.

Well, looking back, I guess my father was not a very good dam builder because that dam went out in the 1926 flood. I think that his fault as an engineer (he was a farmer-type engineer) was that he had never allowed a big enough spillway. He couldn't imagine the different types of floods that we got, and so, when we got an unusual flood, it always overtopped the dam and washed it away. But the fact that we lived that sort of a life, helping these farm lands, brought the importance of water home to me. A good farm depended on having a good water supply and with no imported water and very few water distributors of any kind, everyone was dependent upon their own ability to develop water. Of course, this made it impprtant to pick out the kind of land where water was available because you had to have it to have a profitable and productive farm development in this county. So I was always interested in what my father did and I think I probably developed a higher sense of the value of water than people who did not have that kind of a problem to live with.

I went to local schools here in San Diego. My father, in his later years, was the sheriff of this county. He was sheriff for two terms, and during that time we lived in town. I finished up my high school in San Diego High School and went away to the University of California at

Berkeley. My schooling was interrupted by World War I and, during the war, I served in the Navy. I came back to school and went to law school in Los Angeles, and was admitted to the Bar in 1930. I practiced law during the first session of the 1931 Legislature in the Legislative Council Bureau at Sacramento. Then I came to La Mesa and I opened a law office on July 1, 1931.

CHAPTER II

SAN DIEGO'S WATER DEVELOPMENT 1920-1940

Now the '30's had a profound effect on San Diego County. Like a great deal of Southern California, there was a boom here in the late '20's and there were a lot of bond issues for the development of subdivisions, streets and highways, and things of that sort. The whole San Diego flume and water system had been acquired several years before by a local partnership of ex-Senator Ed Fletcher and a man by the name of Murray. These two men as partners formed what was called the Cuyamaca Water Company. They took over the operation of this San Diego River project, the Cuyamaca Reservoir and the flume line and a terminal reservoir here in La Mesa called Murray Reservoir. That reservoir still exists and now has been acquired by the City of San Diego.

The people in the La Mesa, Spring Valley, and Lemon Grove area had formed an irrigation district. There were lemons and grapes, considerable plantings, chicken and poultry operations, and that sort of thing around in La Mesa, which was a very small town, and the Lemon Grove and the Spring Valley area. They had been served with water for a number of years by little mutual water companies which bought their water from the Cuyamaca Water Company

and distributed it in the local communities. The system was poor and rundown, and they needed some sort of unity in their operations to be able to finance better facilities and also to deal with the partnership that served the water which had become a public utility, subject to regulation by the old Railroad Commission of the State of California. So these people in the communities got together and formed an irrigation district called the La Mesa, Lemon Grove and Spring Valley Irrigation District, which is the predecessor of the Helix Irrigation District which operates this system now.

In the mid-twenties, during this boom period, there was quite a bit of development around the area in the La Mesa, Lemon Grove and Spring Valley Irrigation District and the people decided to bond themselves and buy out this partnership, these private operators who had become the owners of their water system. So they negotiated a purchase for three million dollars with this concern and floated a bond issue. The bonds were sold at six per cent interest and, for a while (this was in the middle twenties), they worked pretty well.

The area developed faster than it should, as a matter of fact, and there were a lot of bond-issue subdivisions under the old Mattoon Act. The cities had passed an improvement bond act in 1915 and the area served by the district became quite heavily encumbered with these

improvement bonds. In addition to this, they were paying six per cent interest on these outstanding bonds that they had issued to purchase the company and things got very tough here in the '30's. Everyone remembers that in that decade there was, I guess, one of the worst depressions that the United States ever suffered, and when that hit this area, the bottom dropped out of nearly everything. The result was that the Irrigation District went in default on the payment of its bonds, and tried in every conceivable way to refinance the bonds. They were finally successful in doing that through the Reconstruction Finance Corporation.

Now, at that time, I had just opened my offices in La Mesa as a young attorney and things were pretty rugged. I was badly in need of a good client and the Irrigation District was badly in need of a lawyer who would work at not too high a price. Well, the two of us got together and I assisted the district in refinancing through the Reconstruction Finance Corporation. We were able to purchase all of our outstanding bonds at sixty cents on the dollar and refinance them at four per cent interest. This was a substantial benefit over the six per cent interest and, of course, we had reduced the total debt and had reduced the carrying charges. But while we were doing that, tax delinquencies were increasing at a frightening rate. And, in the year 1936, the area of the La Mesa, Lemon Grove and Spring Valley Irrigation District was

sixty per cent tax-deeded and off the tax role.

This was mostly undeveloped land. It was the type of farm land and the type of defunct subdivision that had developed during the '20's, but there was no market for the land. These properties had been subdivided and sold under contract to purchasers, and the purchasers saw the handwriting on the wall and quit making their payments on the contracts and, of course, they didn't pay taxes or assessments. The holders of the improvement bonds went broke and the taxing agencies had a real difficult time keeping enough tax-paying property on the roles to finance the essential operations of the agencies.

However, we worked it out during the '30's so that, at the start of the '40's, the La Mesa, Lemon Grove, Spring Valley Irrigation District was in fairly good shape. It had been refinanced and things were picking up. We had to foreclose most of our tax-deeded lands, and had sold them at bargain prices to get them back on the roles and to get someone to help carry the burden. But we were in quite good shape coming into the '40's, which of course was the beginning of World War II. During the '30's, the whole county had suffered about the same fate. There were five or six irrigation districts scattered throughout the county, and there were several mutual water companies. There was, in addition, of course, the City of San Diego, which was the big water holder and the big operator of

water systems.

Well, all of the water that was used in the county was developed locally and the entire economy of the county and its whole population was dependent upon what water could be developed locally. So we still had the same problem that my father had analyzed when he first came here. There were spots in the county where there was apparently an adequate water supply that could be developed but these spots were few and far between. Most of the county area was arid, with some water underground that could be developed by wells, but these proved to be only pockets of water which were quickly exhausted.

San Diego County has a rather peculiar geography. It's basically about a hundred miles wide from the seacoast to the desert, and down the middle of it there is a range of high mountains ranging from four to six thousand feet in altitude. These mountains have a high rainfall and some substantial snowfall when we have good stormy winters. But the water develops on these mountain ranges as the snow melts, and when the rains come, it runs down a very steep incline to the ocean. The result of it is that these so-called rivers in San Diego that flow from the mountains to the sea are very short. They're about twenty to thirty-five miles in length at the most and they have a real precipitous slope until they get down near the coast. Therefore, the water that comes in them runs into

the ocean very fast. It's hard to stop it, and there are very few dam sites. Now, along all these rivers, there are some lowlands and some well-basins, and that's where the water has been developed to support the farming of this county.

The City of San Diego, of course, increased in population and even though it was a small town, it still had a need for domestic water in excess of what could be brought in from wells. So the city had gone up on all of these streams and built dams. On the Cottonwood, which is a branch of the Tijuana River, it had two large reservoirs, the Morena and Barrett Dams. On the Sweetwater River, which would be the next river north of the boundary, there was a privately owned water utility, now called California Telephone and Water Company, which developed the Sweetwater River and built a dam upstream called Loveland Dam and one downstream called Sweetwater River Reservoir. That system took care of and watered National City, Chula Vista, and the city of Coronado and its surrounding areas. The city had also come in on the San Diego River and, after a hard-fought law suit with the La Mesa, Lemon Grove and Spring Valley Irrigation District, they proved their contention to be correct and established that they owned the old Spanish pueblo right to all the waters of the river, which was for the benefit of the inhabitants of San Diego.

After having won the decision, they were generous enough to realize that if they didn't release some water to the Irrigation District for La Mesa and El Cajon and the surrounding valley, those areas would just have to annex to the city and become water consumers. So, rather than force us to do that, they let us work out a negotiation with them and permitted us to develop on the river and divert ten thousand acre feet of water per year. We thought when we accomplished that, that we were all fixed. Ten thousand acre feet was about twice what we were using then but now it's less than a third. So it wasn't as good a deal as we thought we had made.

The city had also gone in on the San Dieguito River and developed that resource too. Of course, it had much greater wealth than the unincorporated areas; so, by the '40's, the city had developed, in at least the south half of the county, about all of the water that would be available for domestic use by its inhabitants and the area of the county was pretty well dried up.

HALL: Going back to the San Diego City and La Mesa Irrigation District water suit over the rights to the waters of the San Diego River, what prompted San Diego City to negotiate with La Mesa after the suit was decided in the city's favor? What prompted them to negotiate with the District to give them a part of the waters, and what part did you play in that negotiation?

JENNINGS: Well, I'll answer the last part of your question first. I was practicing law here in La Mesa but not as counsel for the Irrigation District at the time that the lawsuit was pending before the Supreme Court or at the time that the negotiations were entered into by which the problem was finally resolved. I became counsel for the Irrigation District just after the compromise had been accomplished. And because I was practicing law here and was interested in the problem as a citizen, I was quite familiar with it, but I didn't participate in it until after the agreement had been entered into. After that, I was responsible for its enforcement and for the protection of the Irrigation District's rights under the agreement because I became its counsel.

Now there were two reasons that the city was willing to negotiate for the compromise that was finally agreed upon. While the city had won the lawsuit, which was a suit to establish that it, as the successor of the Pueblo of San Diego, was the owner of the prior right to all waters of the San Diego River and its tributaries, the city had no facilities on the San Diego River at all. The Irrigation District owned Cuyamaca Dam, which was the dam at the headwaters of the river, and the Irrigation District, as the successor of the old Fletcher interests, also owned the damsite in Mission Gorge and the damsite at El Monte where El Capitan Dam was constructed. The city had the

water right and the district owned the damsites. That was about the size of it.

The cost of acquisition of those damsites would be substantial to the city, and yet they were of no practical value, except for dollars, to the Irrigation District because it did not have any firm right to any water on the river, and the city could not afford to put the millions of dollars into the construction of those dams and also pay what the damsites would cost. So practicality dictated that there should be some adjustment between the city and the Irrigation District by which the city would become the owner of the damsites in exchange for water rights, to the district, because the district didn't want money; they wanted water in exchange for the damsites. So the district should acquire some sort of a water right from the city.

A third element in it was that the city, while it had plans for the construction of dams on the San Diego River and the development of some of its rights in the river, did not at that time foresee any great water problem in the city's future. The city also owned rights on the San Dieguito River; they owned and had partly constructed Sutherland Dam; they were contemplating building a dam on the Pamo damsite, which is downstream from Sutherland but upstream from Hodges; they owned the water rights on the headwaters of the Tijuana River, that is Cottonwood Creek and Barrett and Morena damsites. They owned the water

rights on the Otay and the two reservoirs on the Otay. They were considering possibly enlarging both Barrett and Morena and controlling more of the flow from the Cottonwood Creek. The San Diego River was important to the city, but it was not of capital importance and it wasn't the last waterhole, as they considered it.

So they were willing to at least sit down and talk with the La Mesa, Lemon Grove and Spring Valley Irrigation District on some sort of an arrangement by which the city could get the damsites and the district could get some sort of a water right. They figured that a fair solution would be to leave the Irrigation District with its well basins in the El Monte Basin of the San Diego River and not restrict the district at all in its pumping of the underground waters--the city being more interested in the surface waters of the river than the well-field waters. That was a source that the Irrigation District had acquired. It owned the land and the right to take the water from underneath it, except as the city might control and object to it, and it would amount to about three thousand acre feet a year, which at that time, looked like a lot of water to the little old Helix Irrigation District or its predecessor. The total diversions which the Irrigation District had taken historically from the whole river had never exceeded ten thousand acre feet a year.

So the city said, "Well, we'll dicker with you on this

basis. We'll give you the right to take, not in excess of ten thousand acre feet per year from all sources in the river, including your well basin. You can keep your well basin; we don't want to buy it; we don't want to pump the water. You can develop it as much as you wish and you can also take diversions from the river upstream if we build the El Capitan Dam. You can divert, upstream from that El Capitan Dam, the first twenty-seven second feet of surface flow of the river--the total, however, not to exceed an average of ten thousand acre feet per year. In other words, over any ten-year period you can take a hundred thousand acre feet, but no more, and all of your diversions, whether underground or surface flow waters, are to be counted towards this total right that you have. In exchange for that, we want your reservoir sites, the damsites at El Capitan and in Mission Gorge which are very valuable to us."

There was a big hassle going on in the city as to where the dam should be built, whether upstream at El Capitan site or downstream at Mission Gorge site. The Mission Gorge site, in many ways, was a popular site. It would have practically flooded out the whole Lakeside and Santee area and its critics said that it would contain a bunch of bad water because it would be run off from streets and housing areas and occupied lands, inhabited lands, but it was a valuable site. The biggest problem in San

Diego, other than the fact that we don't get normal rain anymore so we don't have flows in these streams, is to find efficient and geologically sound damsites.

So the Irrigation District had the two best damsites on the river. The city didn't consider that the water of the San Diego River was so capital that they couldn't stand the diversion of ten thousand acre feet to the Irrigation District. I think also the city very likely had in mind something that has been close to developing a number of times, that is, that the La Mesa, Lemon Grove, Spring Valley area would annex to the city ultimately, would be a part of it.

So, the deal was worked out on that basis and to the mutual satisfaction of everyone (except certain of the old City of San Diego water developers), including Fred Heilbron, who's always kidded me that the city had no right to give away its Pueblo waters, and therefore La Mesa, Lemon Grove, Spring Valley Irrigation District gained nothing but a short repreive on its life by reason of its deal, and if the city ever needed that water they'd come back and take it. And, of course, the answer to that is, if they did, why then this area would just have to annex to the city and we'd get the same water and just pay some city taxes.

HALL: I see. You were saying that by the end of the 1940's, the county was pretty well dried up. How did it

get a supply of water for the war years?

JENNINGS: Well, in the first three years of the '40's, we had one of the heaviest series of rainfalls that the county had ever experienced except in isolated flood years. But for three years, '41, '42, and '43, we filled up all of our county reservoirs and, as a matter of fact, most of them ran over for those three years. It was very fortunate, because we went into the war years with full water supplies. And, of course, San Diego, because of its location and its climate, became one of the major military bases for both the Army and the Navy in the west. During the war years, we had a very large population which included all the military base personnel plus the thousands of workers that came in here to construct airplanes in the plants that were built here before and during the war.

Most of the water distributors marked time because they were not able to get materials to expand the system--the pipes, pumps, and all the things that you have to have to develop a water distribution system. Those were materials that the government needed to prosecute the war and the manpower wasn't available to us either. So we marked time and we used up all this big reserve of water. We had stood still in development for the war years but had greatly increased the burden upon our water supplies; so even though we started the '40's with full reservoirs, we came out of the war with all the water gone.

Now, in the middle and late '30's we had foreseen, that unless our natural rainfall would increase or our population would decrease, and it grew even in the '30's, that San Diego could not develop enough water within its boundaries to take care of the area the way it should, if it was to be a prosperous and a highly economic development. We didn't have enough water for industry. We didn't have enough water to take care of agriculture, and so the population, of course, would move out and leave the area. But we began to grope for ways and means to overcome that.

Very fortunately, back in the '20's, the San Diego city government had what everybody else thought was a brainstorm. They went over on the Colorado River and made an application to appropriate 112,000 acre feet per year from the river. They called in some consultants at that time to advise them of whether this was a good idea or not, and the chief consultant, who was one of the most prominent water engineers in the state of California at that time, gave a very discouraging report. He made a survey, analyzed the problem and reported to the city that for San Diego ever to expect to be able to get water out of the Colorado River for use in San Diego County was as remote as finding the pot of gold at the end of the rainbow. So these dreamers that filed were discredited for the timebeing, but they did not lose their own enthusiasm, and they persuaded the city over the years to keep this file

on the Colorado River from being abandoned, or at least to keep it alive. So we had this potential supply of 112,000 acre feet, which seemed to us to be the only water we'd ever need. But there was the Colorado River over there, flowing down into the Gulf of California, and how were we to get it?

In the '30's, foreseeing that we were approaching a time when we would have to import water, a series of meetings were held in the City of San Diego, and people who were active in water development all over the county were invited to participate in these meetings. The meetings were sponsored by the San Diego Chamber of Commerce and I was appointed from my area to attend those meetings.

I knew very little about the Colorado River and what its problems were. I knew that the Swing-Johnson Act had been before the Congress for a number of years and had finally been successfully passed. It authorized construction of Boulder Dam, or Hoover Dam, on the upper Colorado River and the construction of the All-American Canal from the river into the Imperial Valley irrigation area, which always had been irrigated by a canal that took off and went through Mexico and then flowed north into Imperial Valley.

So these meetings went on for a year or more in the late '30's. The biggest element of the debate was whether or not San Diego should attempt to develop its 112,000

acre feet that it filed for, by bringing it through the All-American Canal to the end of that canal and pumping it either over the mountains or through a tunnel in the mountains into the headwaters of the San Diego River. The county broke up into two groups. One group wanted to develop our own water in that manner, and another group looked north at the development that was taking place in the Los Angeles area--the Metropolitan Water District of Southern California.

Metropolitan was in the course of building their great Colorado River Aqueduct and were interested in annexing San Diego if San Diego wished to annex to them. But, at that time, they were only interested in annexing the city. Metropolitan was originally made up entirely of cities. The rest of the county got the impression that Metropolitan and the City of San Diego were going to lash up together and that the county would again be left out in the cold. But we had one new break in our favor. In the development of the Colorado River project, and the construction of Boulder Dam, all the water rights on the Colorado River were vested in the Secretary of the Interior by the act that authorized the project.

But the act that vested all those rights in the Secretary of the Interior also recognized all these appropriations that had been made on the river and instructed the Secretary of the Interior to enter into a

contract with each of the holders of an appropriative right. That meant the holders of those rights would at least have storage privileges in Hoover Dam for the amount of water for which they had contracted and filed an appropriation. So the Secretary of the Interior, in looking through these filings on the river, came across that filed for San Diego. Through some happenstance or neglect, I suppose, the city, in filing the appropriation, did not use the name City of San Diego. They filed the appropriation for San Diego, and when the county people found out about that, they made quite a play to the Secretary of Interior that that meant San Diego County. The Secretary of Interior couldn't decide what was intended, and there was nothing in the document to show that it was exclusively for the city, so the Secretary of the Interior gave a contract to the City and/or County of San Diego and that's the way the contract reads for the 112,000 acre feet of water in Hoover Dam.

That still didn't mean we had the water up in Hoover Dam because it was a long way away from us. The discussions went on and the battle went on, but now with the county in the picture, we thought we might bring it through the All American Canal, or that we might negotiate and annex to the Metropolitan Water District to bring the water into San Diego County from the north. We had gone so far with the Imperial Valley and the All American Canal thing that

the City of San Diego had contracted with the Imperial Irrigation District to provide for carrying capacity in the All American Canal that would be adequate to bring our 112,000 acre feet through the All American Canal. And we still have that contract with the Imperial Irrigation District. It costs us a few dollars a year to maintain, of course, and we had to dig up the money to finance that portion of the cost of the canal, which was very small, as a matter of fact. But we still have a right to carry the water through that canal. The problem now is that we are bringing in our water from the other direction. We don't have water we can put in there, but we've never defaulted on maintaining that right in the All American Canal.

We also, of course, reviewed and studied and debated very strongly the alternate to bringing it over the mountains from Imperial. While the objections to joining the Metropolitan Water District was sort of parochial and provincial, we always held that when the two cities started back in the old Spanish days, San Diego and Los Angeles were about equal. Los Angeles grew faster, but San Diego always felt that it was a much better city than Los Angeles, and that it should remain free of any domination by that city up there. We had a much better port, although Los Angeles made a port that finally became a much more important port commercially than San Diego's.

But, in all ways, Los Angeles always seemed to outsmart San Diego and the people in San Diego were very jealous of their local importance and the idea of having to join something that Los Angeles had developed hurt this. So there was really a sentimental interest in going across the mountains to Imperial. And that interest very possibly would have prevailed except for the situation that developed during the war.

Now we come to the time when the agency that ultimately imported the water into San Diego County was formed. The Secretary of Interior called to our attention that, having made a contract with the City and/or County of San Diego for the whole 112,000 acre feet, we had the right to take it, and that something should be done towards the formation of an overall agency that could develop and take that water. There wasn't any way to divide it up. He conceded that the county had some interest in it, and therefore, he had included the county. The big assessed valuation that could build anything big enough to bring the water in, was vested, of course, in the City of San Diego and the city was interested in getting water for itself and was not, at that time, very conscious of any particular benefit in assisting the development of the county outside of the city's boundaries.

I'm glad to say that that position of the city has changed and that now the city is an enthusiastic supporter

of all county development, which is a fine thing. Without it, I don't know what would happen here. But, in the old days, the city itself was nearly as jealous of the surrounding county as it was of Los Angeles and so there were problems. The county people had it mighty tough. But there was this essential thing: whatever the county and the city were to do in making use of the water they were entitled to under contract by the Secretary of the Interior, they had to form some sort of a local overall agency that could divide up the water and would see that everyone got their share and would participate in constructing whatever works were going to bring it, whether it came from the All American Canal or from the Colorado River Aqueduct.

HALL: You mentioned that during the '30's, many people were concerned over water resources in the county. What groups and individuals were concerned with the problem in this county at that time?

JENNINGS: Well, as I've just said, in 1926, the San Diego City Council had made a filing on the Colorado River for a diversion of 112,000 acre feet a year at the Imperial Dam where Imperial Valley took off. So, this was comparatively new and it was considered by many to be sort of an idle act, but many others thought that there would be value in considering bringing the water over. Now the people that were most concerned were basically the people who were responsible for the filing in the first instance,

and that included people like Fred Heilbron, who was a member of the City Council when the filing was made; Fred Simpson, who was a City Councilman and who was quite interested in water development; Phil Swing, who had put together the Boulder Canyon Project and who was a former District Attorney of Imperial County, which, by the way, had been a part of San Diego County until, oh 1908 or '09, around there, and was considered by San Diego as sort of the back country of San Diego County.

Now, all these people were interested in Imperial Valley and interested in San Diego County and felt they shouldn't just be satisfied with the filing on the river but that we should be exploring ways and means to get it over. This was accentuated by two things. The first was the exploration that Metropolitan undertook as to the routing of their aqueduct from the river. One of their aqueduct routes was to bring the water across through northern Baja California, through Mexico, and crossing the border in the mountains at San Diego County and running the aqueduct north to Los Angeles instead of the route finally selected, which was a due east-and-west route.

With exploration in San Diego County for a possible route of the Metropolitan Aqueduct, there was quite a flurry of interest by the holders of San Diego County lands. For instance, the Ed Fletcher family and the Fletcher Company felt that that would be a fine opportunity to

develop a bunch of inland lands in San Diego County if the aqueduct came through this county. So these things stirred up an interest, not so much that San Diego was particularly concerned about any water shortage, but that it did indicate thare'd be a possibility of land development and promotion in the county. And real estate firms, old-timers in San Diego County, thought that there was a big opportunity to make some money and to develop the interior area of the county.

HALL: I see. When were the San Diego Chamber of Commerce meetings held which discussed whether the county should go to the Imperial Valley or to the Metropolitan Water Authority for water? What groups supported one or the other alternatives? And what was your own position on this question, and your role in these discussions?

JENNINGS: The first that I heard about it was when I was practicing law here in La Mesa, and the San Diego Chamber of Commerce in about 1934 or '35, somewhere around there, formed a group to discuss ways and means of importing water and whether to bring it through the All American Canal or through Metropolitan. They selected people from throughout the county by requesting organizations to send in representatives to this county water-study group. My interest had been aroused in water development, but at that time, I was City Attorney in the City of La Mesa and the commander of the local Legion post. The Legion

posts were one of the organizations requested to send representatives by the San Diego Chamber of Commerce. And I was selected by the Legion post here and also requested by the City of La Mesa to represent this La Mesa area in these study and discussion groups.

Now the groups were actually sponsored, and their attendance at these meetings solicited, by the Water Committee of the San Diego Chamber of Commerce. The chairman of that committee was a chap named Euart Goodwin whose family had always been people interested in land development and that sort of thing. The people that took leading parts in the discussion included Fred Heilbron, Fred Simpson, both of whom I mentioned before, and another man named Hal Hotchkiss, who was a partner in a real estate firm of Hotchkiss and Anawolt, who were old-timers in the San Diego County land development, and the Fletcher family again. All these people were interested in the development of lands and that was the basis upon which the meetings were held. How could San Diego best benefit from a route to the river through one or the other of the two agencies?

The Metropolitan route that was surveyed to run from the southern boundary of the county, through the county to the north, was something that persuaded people that, if that could be accomplished, the best thing to do would be to join Metropolitan. We'd have to assume our share of

Metropolitan expense, but on the other hand, a pipeline, a big aqueduct run the length of the county north and south, would open up a great area of the county for subdivision and even agriculture that had never had a firm water supply.

On the other hand, there were interests, particularly the city itself, and frankly, my own area, the La Mesa-Spring Valley area, that would have preferred, at that time, to bring the water from the All American Canal through a tunnel at about the three thousand foot elevation under the area of Julian-Cuyamaca Lake and dump the water in the headwaters of the San Diego River. Now this would have been an east-west route into San Diego. It would have been of no great assistance to the northern area of the county, but from the City of San Diego back through the mountains, easterly, this would have been a very logical and practical route. As a matter of fact, the decision on this debate, if you could call it so (there wasn't any controversy regarding it; it was mostly study and discussion and ways and means and that sort of thing), was not actually made until 1944. It was sort of a forced decision that was made when the federal government decided that they would, willy-nilly, build a line to supply the Naval installations in San Diego County from the Metropolitan Water District which they felt then was the shortest and quickest way to do it.

CHAPTER III

FORMATION OF THE WATER AUTHORITY AND NEGOTIATIONS FOR THE SAN DIEGO AQUEDUCT

Well, we had the war years and, as I say, by the end of the war, San Diego's surpluses in water, which we had when the war was started, had gone and were all used up. Things looked pretty bad. Now this was obvious before the war was over. The United States had tremendous installations throughout the county; we were a military stronghold, and the government decided that they couldn't wait for the people of San Diego to do something. So under federal war powers, the President decided that the government would build an aqueduct into San Diego to supply the military needs and began to survey a route and to investigate what should be done for that specific purpose.

The decision that the government made was to build an aqueduct to the Colorado River Aqueduct of the Metropolitan Water District at the San Jacinto tunnel outlet and run that aqueduct the shortest possible route from there into the City of San Diego, San Vicente Reservoir. This aqueduct would be built at government expense and would be of a size to assure the government that its installations could be properly serviced with water. And it would be a permanent structure and therefore available to the civilian

population of San Diego at such time as it was no longer needed by the military. This became a sort of obvious direction that our future, whether we wished it or not, was to be tied up with the Metropolitan Water District.

So if we were to take over this line which the government was going to build for us, we had to act. The government advised us that, while they had the military powers to force a connection with the Colorado River Aqueduct, whether the Metropolitan Water District wanted them to or not, that when the war was over the aqueduct could not be used without Metropolitan's consent and that we'd better do something about making our peace with Metropolitan so that we'd have the use of this facility. So rather reluctantly we decided that the die had been cast by the federal government and we'd have to do something that would permit us to join the Metropolitan Water District, and we got together and formed the San Diego County Water Authority.

First we had to have a legislative act adopted which would enable the formation of this type of an agency and to do that, we had to draw up a bill and someone had to work at that. So this group that had been meeting all these years, trying to come to some conclusions and trying to get something done, commissioned two other attorneys and myself to draw up such a bill. This was quite an experience, because the other two attorneys were old-time San Diego County water specialists and were highly

competitive. They were anything but friends.

One of them was named Shelley Higgins, old Judge Higgins, who had been practicing water law in the county for many years. And, at the time that we were working on this bill, he represented the Fallbrook Public Utility District. He was their counsel and he was very conscious of the fact that the remaining undeveloped water in the county was in the northern part of the county in both the San Luis Rey River and the Santa Margarita area. Both of those streams still flowed with considerable water that could be developed, and the Fallbrook Public Utility District held water rights in both of them. Judge Higgins was quite anxious about anything we came up with and wanted to make sure we didn't create a monster that could go up there and take away the rights of the Fallbrook Public Utility District in either of those streams.

Now, the other man was another well-known water personality, former Congressman Phil [Philip D.] Swing. Phil Swing was the Swing who authored the Swing-Johnson Act that put together the Colorado River project. At this particular time, Phil was practicing water law in San Diego, and he and Higgins were on opposite sides of practically every water case and they were not the best of friends. Phil was also the special water counsel of the City of San Diego and, as such, very conscious of the protection of the rights of the City of San Diego, and it is possible

that he might have cast some covetous eyes on Fallbrook's water up in the northern part of the county. But these two men were both very positive characters.

I knew both of them quite well and I had a good relationship with them. But in the eyes of both of them, I was kind of an upstart. I was twenty-five or thirty years their junior. They probably considered me as a sort of bat boy for this negotiation that was going to draw up this act. By the time we got it into shape to present to the Legislature, they'd come to the point where neither one would speak to the other. Each of them would speak to me, and I would travel back and forth between their offices with suggestions, and I had to be very careful not to tell Swing that this was Shelley Higgins' suggestion or vice versa. So I kind of took the responsibility myself and I'd tell each of them that this was my idea and they would then give it consideration.

We actually came up with an act which was, to a considerable extent, based upon the Metropolitan Water District Act, but with some changes. One of the changes in it which somewhat haunts us after these very many years was the thing that Shelley Higgins insisted upon. That was that this organization would have the right to develop, import, and distribute water, but that the source of that water had to be outside of the County of San Diego. So we have never been able to use this tool that we've created

for local development. Someday, we may change that because the Water Authority should have the right to assist in the development of any of the water resources of San Diego County to the best interests of all the people in the county. But it's in the law and that's how it got there.

That bill was introduced in the 1943 session of the California Legislature. It was sponsored there by Senator [Ed] Fletcher, who had been one of the partners of the Cuyamaca Water Company and who had always been very deeply involved in San Diego County water development. As a matter of fact, the ranch that we had in Lakeside that I mentioned was a ranch that my father bought from the Fletcher family. Both my father and Senator Fletcher were old land developers in this county--business rivals, but personal friends. Well, he was the senator of this county at this time and he carried this bill through the Legislature. So at the end of the session in 1943, we had an act--the County Water Authority Act.

Then we had to put together the creature instrumented by that act. The act created something similar to the Metropolitan Water District, that is, created a federated type of public agency, a district that was made up exculsively of other governmental agencies. There is no land in the San Diego Water Authority that is not incorporated in some other public agencies. We started out with the Fallbrook Public Utility District, the City of Oceanside,

the City of San Diego, National City, Chula Vista, the City of Coronado, the Helix Irrigation District, the Lakeside Irrigation District, and the Ramona Irrigation District, and that was the San Diego County Water Authority. It sparsely covered the coastal plain of the county. The Public Utility District was on the boundary with Riverside, and the City of Chula Vista was nearly on the boundary with Mexico, so it pretty well, but spottily, covered the western section of San Diego County.

We had problems in forming the district because many of the agencies were afraid of the dominance of the City of San Diego. We had tried to give the outsiders protection against the overwhelming strength of the city by providing a vote based upon assessed valuation and a Board of Directors based upon assessment valuation with at least one director representing each agency and each agency voting as a unit. No matter how many directors it had, it could only cast the number of votes it was entitled to cast. Now, the provision that we inserted in the act, with Shelley Higgins' very strong insistance, was that no agency should have more than half of the total vote. So the resulting creature that we came up with was the City of San Diego having about eighty per cent of the assessed valuation but only fifty per cent of the vote. The other agencies in the aggregate had the other fifty per cent of the vote and the other twenty percent of the assessed valuation.

This agency was formed just in time, because, by 1944, when we sat down around the first Board of Directors' table, the war had come to the point where its end was in sight. So the government decided that they wouldn't have to build the San Diego aqueduct although it had been designed, surveyed, and the specifications for its construction had been completed. Contracts and bids had even actually been received for its construction but, at that point, right then, the government determined that with the end of the war very imminent, it wouldn't be necessary to do it. They notified the San Diego Water Authority that they were going to cancel these bids and since no work had been started they drop the planned construction.

Now instead of being rather hesitant about going ahead with that sort of thing and joining Metropolitan as we had been, we became very anxious that we not lose this facility. These were good contracts and the bids were reasonable and the government had the financing. If we didn't act, we would have to float a bond issue and we'd have to start from scratch to do the same thing that the government was prepared to do. So, we put all the pressure on Uncle Sam that we could develop.

We went back to Washington and got the Navy to assist us, and finally the government said, "All right, we will go ahead with it, but we will not build it at our expense as we had originally contemplated, because it's now a

civilian project. It's needed for the civilians and not for the military. So we will do this with you: we will keep the contracts. We will build the pipeline. We will finance the capital to construct it and we'll have it constructed by the Reclamation Bureau (which is the big water constructor for the government). But it will be done under a repayable contract whereby, you, the San Diego Water Authority, will undertake to pay the true cost of such construction whatever it might be. We'll give you fifty years to pay it, and we will not charge you interest. And that is the end of the government help. So take it or leave it."

So we took it.

HALL: I see. What was the nature, the means and the practices of the group who went to Washington, I believe it was in 1944, to get the government to agree to help finance the aqueduct? How did they do this? Who did they see?

JENNINGS: Well, as I mentioned, first the government had made the decision to build this aqueduct connection at a capacity that would take care of military installations and to build that connection to the Colorado River Aqueduct. They had come to that conclusion through the formation of a study committee which was appointed by the President, Franklin Roosevelt. The chairman of that study committee was William E. Warne, who is now the director of the Department of Water Resources of the State of California,

and at that time was an employee of the Department of Interior working in the Reclamation Bureau. Warne brought his committee to California and it included a representative from the Bureau of Yards and Docks of the Navy. The local representative on that commission or committee was Phil Swing, who, of course, had been active throughout the formation of the Water Authority. There also was someone from the Attorney General's office assigned to this committee. I forget who the personnel were because I wasn't very active in the negotiations with this committee.

But the committee came to the conclusion and recommended that this line be built from the Metropolitan of a size merely to take care of military installations in San Diego County. The project was then taken over by the Navy and the Department of Interior. The Navy was to manage this project, but as I stated, to be constructed by the Reclamation Bureau.

Then, as I also mentioned, when the war came to an end, as far as the European campaign was concerned, it was thought that the Pacific war would fold up quite soon, and the President concluded that there was no justification for proceeding at government expense to build this aqueduct under the war powers. So they notified us that they were going to not enter into the contracts for the construction.

So, the City of San Diego stepped into the breach. They sent their mayor, Harley E. Knox, their city manager,

Walter Cooper, Fred Heilbron from the Water Authority, and Phil Swing, who, at that time, was still Special Counsel for the City of San Diego on water matters. They went back to Washington to see if there was any way of saving this project on these favorable contract bids. The Navy was our big help. They knew that whether the war was over or not, there would be, for many years, a big Naval installation in San Diego County and that we needed the additional water and the assured water supply that an import project would give us. So, they were sympathetic to our efforts. The help of the Navy and the fact that San Diego's people were prepared, ready, willing, and able on the spot to sign a repayment contract, did preserve the federal project.

But even then, having underwritten the project and having entered into a contract with the government for the repayment at its true cost, when the contract came up through the government bureaus to the Bureau of the Budget, the Bureau of the Budget questioned the right to spend money for the purposes of the contract without any authorization from Congress. It was no longer being done under the President's war powers. It was being done under a contract between the federal government through the Navy and the Water Authority. The Bureau of the Budget said something to the effect that, while the President during the war had the power to construct this facility, the Navy could not

do it, even with a contract, without some Congressional authorization of the use of federal funds.

So right at the time when the contracts had been let, and the contractors were on the ground and the area was fast running out of its accumulation of local water, we were threatened again with the federal refusal to go ahead with the construction. The City representatives and the Authority representatives again went back to Washington and were told there that, if we were to succeed, and if the construction was to go ahead as planned by the government, we would have to pass a law. We would have to have a bill go through the Legislature authorizing the contract and authorizing the appropriation and expenditure of the money. Now here was the project, ready to go ahead, and the question was, should the Navy have to await the adoption of bills which would have to go through the long mill in Congress or should they be able to go ahead presupposing that such a bill would pass? The Navy, of course, has always been wrapped up in San Diego's affairs, being practically the chief industry in the San Diego area, and they were very anxious to build this pipeline. They had some funds of their own for construction but not enough to build a fifteen or sixteen million dollar project.

We had a bill introduced by our then Congressman Charles Fletcher, a son of Senator Ed Fletcher who was then in Congress, and were given assurance that the bill

would be adopted without any particular problem. On that basis, the Navy prepared a contract which the City signed on the spot without authorization of their City Council or anything else, but the mayor and the city manager and the water specialist and legal advisor were there, and they signed a contract and had the bill introduced. The Navy, on that basis, proceeded to enter into the contracts, but they wouldn't spend any money nor permit any work to be done under the contracts until the City of San Diego had confirmed this contract through its City Council.

The bill introduced by Congressman Fletcher had gotten through the House, and there was no problem expected in the Senate. So, the Navy decided to go ahead with the construction, using funds which they already had authorized for construction of the facilities and that could be sort of bypassed into this project. And they did so.

The bill was introduced but wasn't actually passed and signed by the President until after the line was completed. The bill proposed to authorize this line, but it was an existing fact at the time that it finally became effective. So, with some close timing there, with everyone taking a small chance, the Navy went ahead and let the contracts. Construction started as soon as the bill passed the House and the people in the City of San Diego, through their City Council, confirmed the action that the mayor and city manager and legal counsel had made in

Washington, which was to actually sign a repayment contract.

It was an interesting experience back in Washington with the Congress on this thing, because we were on such shaky grounds. We needed the water so badly and the Navy was turning its head the other way and going ahead and using their own money for the construction. It was something that might have been very serious, I suppose, if we had not gotten the authorization through. But Fred Heilbron was the chairman. In fact, Fred Heilbron, in addition to putting the Water Authority together, was one of the four representatives of the City of San Diego on the board when the Authority was first formed. There were nine of us on this regional board of directors. I represented the Helix Irrigation District. There were four men from the City of San Diego, including Fred Heilbron and Fred Simpson, both of whom are still there after these some twenty years.

Fred Heilbron is in his late eighties, but he's a vigorous man with a lot of savvy, and he's conducted the affairs of the Authority with sort of an iron hand all these years and he is greatly responsible for the success of the Authority. He was our chairman and the leader of this delegation that went back to Washington. Fred is a very outspoken, forthright type of man. He's very tall. He's almost six-feet-five or six. Played baseball in his youth, has a broken finger to prove it, and he is the kind

of person that is very effective before a Congressional delegation.

They think of him as typical grassroots; he represents the people. And when you go to the professionals in Washington and deal with the attorneys and the engineers and professional bureau people, civil service people, and career government people, a chap like Fred will speak their language, but when you get before a Congressional committee, that's where he shines. He speaks to these Congressmen and talks their language and they appreciate him and understand him. And we soon learned that, while some of the professional staff people in the Authority could get quite away with the attorneys of the Navy and the engineers from the Reclamation Bureau that were going to build a line, when we wanted to assure a welcome in the government and we had a Congressional committee to appear before, we put him up in front and he was very successful. And a lot of good friends back there, people from all over the Southwest, Senators like Senator Connally of Texas and that type of person appreciated Fred very much. And I think that he is to be credited with the fact we were able to get that bill through in spite of the very touchy circumstances under which we were working.

A peculiar thing arose from that. Right at the time this question of the use of the money without a Congressional authorization was brought up by the Bureau of the Budget,

the President appointed or reappointed the same committee that had originally recommended that the government build the aqueduct in San Diego County. Incidentally, the committee chairman was William E. Warne, who was then Commissioner of Reclamations, and who is now the Director of the Department of Water Resources in the State of California. So the President reconstituted that committee. The purpose of the committee was to make a study to decide if the government should concern itself, even though San Diego had underwritten the repayment of the cost of the aqueduct. The government had originally planned to build it entirely at their own cost and to build it at half size.

The reasoning of the committee that the President had appointed was that the government had come in here and used up these precious supplies of local water which San Diego had accumulated and stored and had used most of it during the war to supply a very substantial military installation that was here. And there was some feeling that the federal government owed San Diego something, by reason of that, towards the cost of this facility.

So this committee was in the process of holding meetings or hearings to make a recommendation to the President just at the time that this problem came up. We had great hopes that maybe the government would pick up a substantial portion of the tab for this facility, but when we were threatened again with the possible loss of the whole thing,

we soft-peddled the idea of federal contribution and just concentrated on the problem of getting it built.

And so that committee, of which Bill Warne was chairman, sort of disappeared into limbo and nothing has been said about it since. There are occasions when the question still comes up though. Fred Heilbron, in particular, remembers these circumstances very well and thinks we ought to petition the government once more and have them take a long hard look at whether or not they owe San Diego something which was never paid for.

But, the government went ahead and built the aqueduct and it was completed in 1947. It pumped water into San Vicente Reservoir in 1947 at a time when the whole area of San Diego County had less than three weeks' water supply remaining. It was just in time.

The Water Authority began the operation of the line and took on the obligation to repay the government. This project cost us $16,000,000. In the meantime, we had negotiated with Metropolitan to join as a separate agency member of the Water District. We accomplished that annexation in 1946. Metropolitan insisted, as a condition of the annexation, that we transfer and merge with their Colorado Water right our 112,000 acre feet water right. This was a real good deal for San Diego because Metropolitan had 1,100,000 acre feet right in the Colorado River. So our addition to the Metropolitan right brought Metropolitan

to a 1,212,000 acre feet right in the river of which we are entitled, by a matter of right, to approximately ten percent. Ten percent of the Metropolitan right is just a little bit more water than we brought to them.

But the beauty of the membership in Metropolitan is this. The California interests, the Imperial Valley, the Palo Verde Irrigation District, the Coachella Valley, the City of Los Angeles, the City or County of San Diego, and the Metropolitan Water District have divided up the water of the river in priorities. The first four priorities on the river vest in the Imperial, Coachella, Palo Verde and Metropolitan. San Diego's right was a fifth priority right. The total of those four priorities comes to the 4,400,000 acre feet which, in the Arizona case, the Supreme Court has ruled that California is limited to. So, San Diego's original right would have been chopped off at any time that the river was fully developed by reason of the Arizona suit. So we got our share in the fourth priority water by swapping our fifth priority water to Metropolitan which is a part of the water which Metropolitan has lost by decision of the Arizona suit.

HALL: I see. You mentioned, sir, that during the period when the San Diego County Water Authority was formed, the City of San Diego was not particularly conscious of the problems of the county. What was the reasons for this attitude?

JENNINGS: I suppose it was just the long, historical position of rivalry between the city and the county areas over the resources of water in the county. The city had the responsibility, of course, of taking care of its population, and all the sources of water, up til the importation of a supply from outside of the county, were from the development of the few and rather small and inconsequential streams and rivers of the county. Now, it was along these rivers that such development as had taken place in the county existed. The San Luis Rey, which was a fairly well-irrigated basin from its source in the mountains to its mouth right at the city of Oceanside. The San Dieguito, the San Diego River, the Otay, and the Tujuana River all were sources depended upon by the county areas but they were also the only sources from which the city could develop water to supply its inhabitants with domestic service. So the historical position in San Diego was the city against the county.

The city leaders had quite a difficulty in changing from a position that it was the responsibility of the city to develop the county water and to take a position that the development of the county was an asset to the city and, therefore, that the city should cooperate with the county in trying to provide adequate water for both the city and county.

HALL: You suggested that during the '40's the federal

government advised, "us" on the need for a single agency for water development. Who was "the group" that the government advised?

JENNINGS: It was the same group that had been studying ways and means for bringing Colorado River water into the county. It also included and added to that group both city and county officials, neither of whom had, in their capacity as public officials, been particularly involved in this discussion about the bringing of water into the area. But the federal government, in the construction of the Boulder Canyon development, the whole complex on the river, came to the conclusion that only persons or organizations or public agencies holding contracts with the Secretary of Interior could acquire water rights in the river. They acquired them, basically, upon the historical filings that the areas had made, but they were converted. Whatever rights these several agencies had in the river were converted into contracts with the Secretary of Interior.

Now, the Secretary of Interior, while recognizing that the City of San Diego had the only filing in San Diego County on the river, contended that it was the responsibility of the federal government to see to it that the whole area received the benefits of the Boulder Canyon Project Act.

And the Secretary of Interior said, "Now, we will deal with and give a contract to the city and/or county. But you people, when you get serious about actually bringing

the water in, should form some kind of a single agency that can contract, and it can build the facilities. It can annex to Metropolitan or bring the water over from the All-American Canal. Whichever way you go, you need to form some agency that can speak for you."

The Board of Supervisors historically have never been in the water development field. Counties, as such, had no real position for the development of water. It's always been done by cities or by local districts of some sort. So the Secretary of Interior notified all of us that were involved in ways and means and discussing the pros and cons of the approach towards an importation problem, that we should form some sort of a governmental agency. And that, of course, ultimately became the Water Authority.

HALL: I see. What individuals or groups were involved in the organization and promotion of the San Diego County Water Authority?

JENNINGS: First it was the Water Committee of the Chamber of Commerce. They put together an organization with the cooperation of the Board of Supervisors of the County and the City Council of the City of San Diego a group to propose what kind of an agency should be formed after this recommendation from the Secretary of Interior. As I've mentioned, the attorneys who participated in the preparation of the act included Phil Swing, who at that time, was special counsel of the City of San Diego on water matters;

Judge Shelley Higgins, who represented a number of the water districts in the northern part of the county; and myself, as the representative of the eastern county unincorporated areas.

So, we had the City of San Diego, the eastern area of the county, and the northern area of the county, each with their own attorneys interested in their protection but interested also in putting together a mechanism of some sort. And the three attorneys did the work. The attorneys, though, were sponsored by the City of San Diego, the northern county unincorporated areas, including water districts, and the east county areas. We also, in each instance, had a great deal of interest in what we were doing and a great deal of supervision by the responsible agencies--the county Board of Supervisors and the San Diego City Council.

HALL: Was there any particular reason why the southern part of the county wasn't represented? There was National City, Chula Vista. . . .

JENNINGS: Yes, I think there was. Chula Vista, National City, and the area immediately in their environments were supplied with water by a public utility, a privately owned investor-type public utility called the California Water and Telephone Company. This company had the rights on the Sweetwater River. They were proposing to build a dam upstream and they already had a dam at the lower portion

of the river, the Sweetwater Dam. They were proposing to build a dam upstream at a site where ultimately they did build the present Loveland Dam and Reservoir. The public utility opposed this importation project. Their contention was that their area didn't need it at all. And, actually, while both the City of Chula Vista and National City were original members of the Water Authority, the people up there had quite a battle with the company on the joining of the two cities to the Water Authority. The utility opposed it very strongly. They tried to talk us all out of even forming the thing, and they tried to keep their own area out of it. As a matter of fact, just shortly after the Water Authority was formed, the only water they've had is the water that has been imported because people with a little more imagination looked a little more forward than the company did, and, who, in spite of the company, did join the Water Authority.

HALL: I see. Were there other groups who opposed annexation and felt the same way for various reasons?

JENNINGS: Yes, there were, although the first opposition of Cal Water and Tel was to the formation of the Water Authority or to their area joining the Water Authority.

HALL: Yes.

JENNINGS: Once the Water Authority was formed and their area was in it, the utility made no further objection, so they did not oppose annexation to the Metropolitan. The

opposition to annexation to the Metropolitan was never strong. By this time, of course, San Diego had underwritten the construction of the pipeline, with that pipeline being built at the expense of the City of San Diego and the San Diego County Water Authority, which took over the contract from the city as a part of its annexation to the Metropolitan.

There was little or no opposition to annexing to Metropolitan. It was rather obvious that we were going to be stuck with this pipeline and the only way we could use the pipeline was by annexation to Metropolitan. We got pretty good terms out of Metropolitan for our annexation to them, and the group that negotiated the annexation consisted of all of the nine directors of the Water Authority and the City Manager and Mayor Harley Knox of the City. So, if the area was going to be stuck with this fifteen-million-dollar project to build a pipeline, it was obvious that the only way to use it was annexation to Metropolitan.

So what would have been opposition of annexation to Metropolitan was sort of nipped in the bud by the fact that we were committed to the pipeline. The opposition, what little there was, was from the people who would have benefited a great deal more by the reason of their land ownership in bringing the water across from Imperial, across the mountains and into an east-west aqueduct to San Diego, plus what you might call the old-time, die-hard group in San Diego that always felt that we must avoid any entanglement

whatever with Los Angeles and the Los Angeles area. However, there was no organized or strong opposition and, as a matter of fact, very small opposition vote to the annexation under this proposal.

HALL: I see. Were there any problems in getting the San Diego County Water Authority Act passed by the Legislature?

JENNINGS: No, not at all. There was absolutely no opposition. It went through with no problems at all. The act was copied to a considerable extent after the Metropolitan Water District Act, with changes that would make it more applicable to the local situation. But there was no legislative problem. We drew up the bill and presented it to our senator, who at that time was Senator Ed Fletcher and who was in favor of this kind of development. And there was no one interested in the bill but ourselves, and that type of bill generally goes through the Legislature with no problem at all.

HALL: How and why were you appointed to become a member of the San Diego County Water Authority?

JENNINGS: As I say, in the early studies as to whether we should do anything and, if so, what we should do, I represented the City of La Mesa as its attorney and the Legion post as its commander in these studies and negotiations. I became very interested in the thing and quite convinced that it was essential to the county to bring it in. Therefore, I was extremely active in the negotiations

that finally resulted in the formation of the Authority.

I was one of the three technicians that drafted the act, and when it was formed, the Helix Irrigation District, which was then called the La Mesa, Lemon Grove and Spring Valley Irrigation District, for which, in the meantime, I had become counsel, nominated me as their director to the San Diego County Water Authority. I was both the director from this irrigation district and the secretary of the original board, and for about the first six to eight months of the existence of the Authority, I had to do what I could as a kind of a counsel to the board because we started in, of course, without any money.

We formed on the first day of July and so there was going to be no money coming to us from any tax revenues until the fall of the year following the formation. So the La Mesa, Lemon Grove, Spring Valley Irrigation District made available its board room for the board meetings of this newly formed agency and my wife, who was a former legal secretary, took the notes of meetings. And I was both its secretary and its counsel until we got to a point where we could hire a staff because we had some financing. So, in the early days of the Water Authority, the board met at the Irrigation District office in the evenings and my wife typed up the notes and we had a sort of a homemade organization for quite a little while, until we could afford a staff.

HALL: I see. What is the nature of the San Diego County Water Authority's relationship to the Metropolitan Water District? Is it a subdivision of a larger organization, an equally sovereign body, or a contracting agency? What exactly is the nature of its relationship?

JENNINGS: Well, the Metropolitan Water District is the first of a type of agency that will probably be more common in the future. It is an aggregate of separate, independent agencies which are united together under an act that gives all of them a voice in the management, operation and sharing in the product, the water, based presently upon their assessed valuation. The Metropolitan is an overall agency; the Water Authority is one of its corporate members. There is no area in Metropolitan except that which is already within a public agency, a city, a water district of some sort, which agency is a member and a part of Metropolitan.

There, the representation is by members of a board of directors. The number of members that you have is in proportion to your assessed evaluation and the number of votes that your members have as a unit is based upon an assessed evaluation of each member unit. In this way, you can't say that that the members are independent sovereigns; they're not as far as the Metropolitan Water District is concerned, though for every other purpose, they are. The City of San Diego and the San Diego County Water Authority or the Helix Irrigation District can go any place they wish

and get any water that they can acquire. Then they can distribute it independently in accordance to their own laws and their own wishes.

But, in order to acquire water that the Metropolitan Water District has developed and has available, they must do it in accordance with the Metropolitan Water District Act, and, to that extent, they are not free agents in the distribution of that water. For instance, Metropolitan has a rule that no agency can distribute water acquired from the Metropolitan outside of Metropolitan boundaries. Now the Metropolitan itself can but none of its member units can. They must limit their distribution of water to the area within the Metropolitan's boundaries. Now that means the City of San Diego, for instance, can distribute some of the water from the Metropolitan to the Helix Irrigation District, but neither of them can distribute water outside of the San Diego County Water Authority, which is all a part of Metropolitan.

Now, this dual situation leads to considerable problems. Metropolitan has problems with its member units; the member units don't feel that they are subordinate to Metropolitan because only in this one instance, in their use of Metropolitan water, are they subordinate. In all other respects they're free, independent, sovereign agencies of the State of California. But in this one respect, to the extent that they acquire water from Metropolitan and then distribute

it, they're completely under the rule of the Metropolitan Board. You have representation on that Board, but what the majority of the Metropolitan Board vote determines establishes the price of water and the tax rate and the rules and regulations of how you operate and when you get the water and all that sort of thing.

HALL: I see. So when the Metropolitan District suggested that Los Angeles use northern California water and San Diego County, for example, should use water from the Colorado River, the Metropolitan Water District was completely within its rights in allocating waters like this.

JENNINGS: That's true. The only attack that could be made upon that sort of a decision would be that it was discriminatory as to those who were forced to take a lower quality of water. Whether we would have prevailed in such an attack or not is a question. The courts are reluctant to try to climb into the mental process of a board that has jurisdiction to use its discretion. And you can only challenge a decision that the Metropolitan makes by a majority of its board through the contention that it was discriminatory in some way and was not giving a fair shake and therefore was not exercising due process in arriving at this decision.

HALL: Well, when various smaller units annex themselves or join together with the Metropolitan, do they assume a share of the debt of the Metropolitan?

JENNINGS: Yes, they do. Any agency that is incorporated into the Metropolitan system, from then on picks up their percentage of the whole debt of the Metropolitan, whatever that shall be. In addition, Metropolitan charges them an annexation fee which is calculated to represent what they would have paid had they been in Metropolitan from the very beginning. Metropolitan now charges, to save a lot of expense in calculating what that amount should be, a flat one hundred dollars an acre annexation fee. But when we joined, and until very recently, an agency joining had to employ a firm of tax consultants to go over the county rolls and figure the assessed valuation of the area within the agency from the first year Metropolitan levied taxes. Having arrived at all those years of total assessed evaluation of this agency, then the Metropolitan tax rate for the appropriate year is applied to that assessed evaluation. The aggregate of that, then, with interest at the rate of four percent per annum, is the amount of the annexation fee. The purpose of that was to put everyone in Metropolitan on an absolutely even base.

CHAPTER IV

NEGOTIATIONS FOR THE SECOND BARREL OF THE AQUEDUCT

Since the completion of proceedings for the annexation to Metropolitan Water District, we've had an assured supply of water for our needs up to the present. But we have had a constant struggle to build facilities fast enough to bring the water into the area as rapidly as the needs develop. The aqueduct which came into service in 1947 was just about half of the size that was needed and that we would have built had we been in charge of the construction. The Navy designed it in the first instance to supply the military installations in San Diego County and built it to the size that they had planned for originally. Inasmuch as they had planned it merely as a federal facility, we couldn't complain that it was only about half the size that we needed. It was built to a capacity of eighty-five cubic feet per second, and it would deliver approximately half of the amount of water which we had transferred to the Metropolitan Water District, which was about half of our original appropriation. However, it was a very substantial amount of water and it carried us along until we were able to build the second line in San Diego which was completed in 1952.

Now, this first barrel, so-called, of the San Diego aqueduct was a rather interesting engineering project inasmuch as the right-of-way that was acquired by the government was big enough and wide enough to accommodate a second, paralleling pipeline. There were a number of tunnels on the route and two or three rather long and complicated siphons which carried the water down and across the San Luis Rey River and the Santa Margarita River for instance. Those steel siphons were built to full size, ultimate capacity, and at the entrance to each tunnel there was a structure which the engineers call a "bifurcated" structure. It consisted of two spouts sticking out from the tunnel on the upstream side. Each spout was built to take one pipeline the size of the first barrel. So these structures were spotted all the way down through the aqueduct right-of-way and all that had to be done to double the size was to hook up these bifurcated structures with another big pipeline. Now these pipelines were from four to six feet in diameter. They are huge lines, but the tunnels were built for double capacity and so were some of the siphons. Even some sections of the pipeline which were in particularly difficult territory were constructed at full size. So the whole thing was planned for a duplication at some date when it was considered that it might become necessary. But the first barrel was completed and put into service in 1947 and we immediately began to receive water from it.

In the meantime, the drought, which we are still suffering from on a cyclical basis, had begun and we were not getting any local water runoff to speak of. We were getting a little, but it was inconsequential. So we were completely dependent upon this first barrel in the first aqueduct to the Los Angeles Aqueduct and the outlet of the tunnel through Mount San Jacinto. So we had just got through with that struggle to get that thing completed when we realized that we were faced with the necessity of building the second line on the aqueduct approach and we began to study how we could put together a project that would build the second barrel. Costs had increased, and we knew it would cost us more than the first barrel even though we had these sections of the line that were completed to double size. But steel had gone up--this was immediately after the war, and nearly everything was in short supply because all the materials that had been going to the war projects were in demand for automobiles, structures of all kinds, and so on. We had all this deferred construction and maintenance and what not to contend with, so materials were in short supply.

So we knew that this second barrel was going to cost us more than the first barrel did, and, at first, we proposed doing it by a bond issue of our own--the ordinary public agency financing method of voting bonds and constructing your works and then paying the bonds off over a

long period of time. But we immediately ran into a snag and that was this: we did not own the right-of-way nor did we own the first barrel. Therefore, we were told by bond counsels that we could not vote a bond issue because we would be hooking something up to an aqueduct that we were purchasing from the government under a lease purchase contract and that would revert back to the government in the event of default on our part.

As a matter of fact, it wasn't even a reversion. The government owned the right-of-way and owned the pipeline and to this day, we are renting it. However, when our rental payments have paid the whole cost of it, which will be fifty years from the day we started with the project, we will own the facility. In the meantime, it would be uneconomic to vote bonds to pay off the government contract, because the bonds would have to bear interest, possibly from 2½ to 3½ per cent, and the one break we got from the government was that the contract payment was interest-free for that particular contract.

So we considered a long time as to what to do with this thing and finally came to the conclusion that we'd have to go back to the federal government again. We asked them if they would enter into another contract with us to build the second barrel in their right-of-way and hook up the line to these bifurcated structures and add this to the lease-purchase contract that we already had with them.

When we first made our tentative checking and exploration here, we talked with the local Navy officials, but the government appeared to take a very dim view of the plans. They had already built this project and they considered that they were through with it. There was really no precedent for this sort of thing. As a matter of fact, the Navy was not even the constructing agent of the first barrel: it was actually built by the Reclamation Bureau.

We talked with the Reclamation people and they said it was a hopeless thing as far as they were concerned, because while they could do such things as build the first barrel for another governmental agency (the Navy), they couldn't do it for an organization such as the Water Authority or the City of San Diego. In the first place, all Reclamation projects are basically agricultural projects and if there is any municipal water resulting from a Reclamation project, it is just as an incident. It is sold on a different basis than agricultural water and, in a Reclamation project, municipal water is a secondary right because water is used first for irrigation.

So we just met discouragement and rebuffs from all the government agencies. On the other hand, we could see no way to build the line and hook onto the facilities we did not own and put it in a right-of-way we didn't own, under a local bond issue. So we concluded that we would have to go over the heads of the federal bureaus that we were talking

to (the Navy and the Reclamation Bureau) and go directly to Congress and explain the circumstances and hope that they might authorize a federal construction under a repayment contract of this second facility which was becoming badly needed.

With that complication, we needed a very strong and united front locally to accomplish this. The Water Authority, which by then had been in operation for some four or five years, had finally become other than a paper organization. It had gained some muscle and a little strength as an operating organization, and it had a good staff. We concluded that we would first attempt to get all of the San Diego interests completely behind us and that we would need Metropolitan to assist us. And with the strength of all of Southern California thus behind us, we thought we had a fair chance of getting a bill from Congress which would permit us to act on this.

So one of the first things we did was to call a meeting in San Diego with representatives of the national government. And, again, the President had appointed a new commission, chaired by William E. Warne, to meet with us and discuss the necessity for enlarging the size of this aqueduct, possibly at government expense. I think that the federal government felt that they had sort of forced us into paying for the first one and into building it at an uneconomic size.

So, Mr. Warne, the attorney for the Navy Department, and one of the representatives of the Bureau of Yards and Docks which would be the Navy section that would have charge of this thing and had the contract with us on the first aqueduct, came out for an evening meeting with the members of the board of directors. We invited representatives of the Chamber of Commerce and the City of San Diego, of course, to meet with these gentlemen and attempt to convince them of the necessity of what we were trying to do. The representatives on the Water Authority of the city included a man by the name of Gerald Arnold, a retired major from the Army Corps of Engineers, who had started in just after the war as an assistant city manager and at this particular time was the Public Works Director of the City of San Diego.

Now, you have to keep in mind that, while the Water Authority represented the county agencies that included the city as one of its members, the City of San Diego had the overwhelming right to the use of water from the facilities. We had the preferential-right section in our act which provided basically that each unit member of the Water Authority would have the preferential right to purchase water which the Authority had available for sale. That quantity of water would be based upon the amount of money paid into the Authority by the member unit. The amount of water was in proportion to the money paid in by the one agency to the

total pay-in from all agencies.

Now, on that basis, the City of San Diego paid about seventy-five per cent of the taxes of the Authority and at the time we were discussing the need for the second barrel, the City had a right to take seventy-five per cent of the water. Seventy-five per cent of the water from the second barrel would supply the city requirements and supply them for some time. It would not, though, take care of the city's needs and its requirements plus the other agencies within the Water Authority. So, as far as the City's position was concerned (selfishly), they could get along for a few more years without a second barrel, but if that should be the case, then the other member units of the San Diego County Water Authority would not get enough water to fulfill their requirements.

One of the things that I'll say in this regard is to the credit of Fred Heilbron. While he was a representative of the City on the Authority board, he always looked to the Authority as being the agency to which he owed his loyalty and for which he was responsible. He never permitted the selfish welfare of the City to interfere with what he felt was the Authority's responsibility. He very sensibly phrased that responsibility as being sure that the Water Authority would bring enough water into San Diego County to meet the entire needs of the county area regardless of any provincial representation of a particular agency.

Fred Heilbron pushed very hard for that, and he had the unanimous backing of his board, including the representatives on his board from the City of San Diego which had the voting control. But in the negotiations to try to get a unified backing for the second barrel, the biggest problem we had was with the City of San Diego.

At the meeting, we were sitting around the table in the Authority boardroom with Mr. Warne, who represented the President, and the people who represented the national government and the Navy and the Reclamation Bureau, selling them, we hoped, on the necessity for government assistance to overcome this deadlock in which we found ourselves. We had invited the City of San Diego to send representatives for purposes of discussing this matter with the representatives of the federal government. At that meeting, all was in peace and harmony. Mr. Heilbron had each one of us speak, representing our particular area, and say why we felt the need for the additional capacity was there. And this was all handled by members of our own organization.

All the people there had been expressing themselves on how badly we needed that water and that this was the only way we could figure that we'd get it. We had heard from almost everyone around the board table and were about to adjourn, when Mr. Heilbron came to Mr. Arnold. We thought we had had a very successful meeting up to that point. Well, Mr. Heilbron asked Mr. Arnold if he would

care to contribute to the discussion and Mr. Arnold said that he would. He reached down beside his chair, picked up his briefcase, opened it and laid it out before him.

He said, "It is the position of the City of San Diego that we will not need this second barrel for, from fifteen to twenty years; and, therefore, we do not join in this position taken by the Water Authority and by its other members. We feel that there is no need at this time for either the city or the government to be burdened with this additional cost of building the pipeline for which we have no need and which we don't care to participate in the cost of."

And then he read some figures from his briefcase, supporting the position that the City of San Diego wouldn't need this for years and years and there was no reason as far as the city was concerned for this expansion.

Well, you can imagine the feeling that came over the board when this statement was made. Fred, for one of the few times in his life since I've known him, was just speechless.

He sat there and looked at Arnold and then he said to Mr. Warne, "Well all the rest of us think that Mr. Arnold is wrong, and we are terribly surprised that he would present this view to you at this time because he has never presented this view to the Water Authority. We never heard of this before and we are embarrassed. There is nothing

more that we can say but we hope to be able to present you with the material that will prove that Mr. Arnold is wrong and that the City needs this as well as the rest of us do."

And, then, what had been a happy and successful meeting up to this point, just collapsed and everyone went their way. It just blew up on that sort of a note. If the City wasn't going to be cooperative on it, the federal government was certainly not interested in building it for the rest of us.

We then started to try to convince the City of San Diego that they were in error on this, that they were counting too much on local water, and that it would take two or three years to build this aqueduct, and perhaps longer than that to get it authorized and they should be with us rather than against us.

It took us quite a while to overcome that position that the City had. Even after we came back from Washington with the bill drawn and a tentative contract with the Navy for the construction and the repayment of the cost of the second barrel, we were met at a City Council meeting by Mr. Arnold and a number of city councilmen, not a majority, thank goodness, but a substantial group on the City Council supported Mr. Arnold, and were going to oppose putting this contract into effect for the construction of the second barrel, just on the basis that the City itself did not need

the extra water and might not for another twenty years.

That was a very poor guess; they needed it before it was finished, as a matter of fact. But the Water Authority, through the leadership of Fred Heilbron, principally, and the loyal support of all of the City of San Diego directors and, ultimately, the support of the Chamber of Commerce, we were able to put it across.

We never were able to persuade Arnold that he was wrong. He insisted to the bitter end, until he left the employ of the City of San Diego, that there would be no need for this second barrel for at least twenty years as far as the City of San Diego was distinguished from the Water Authority. This was in 1949-1950, which would have delayed it until 1970 when we're going to be just getting by as it is. In 1970, of course, the northern California water would be coming in.

As I said, we finally got the City to reverse Mr. Arnold's position and take the official position that, rather than be conservative on this matter, the City should look forward and therefore would support the Water Authority in its effort to work out the construction of the second aqueduct. With that accomplished, we went to Metropolitan. Half of the cost of the first barrel was being paid for by Metropolitan according to the terms of annexation. They picked up half of the cost of the first barrel, and so we had to also convince Metropolitan that it would be necessary

to double the size of this aqueduct; that they should participate with us in accomplishing that; and that they should help us get the government to go ahead with this thing. So if we were successful in getting the government to build the second barrel, we wanted Metropolitan to do what they had done on the first barrel--enter into a contract with us to repay the share of their cost at their end of the line.

Metropolitan, perhaps influenced to some extent by the position that Mr. Arnold had taken on the need for this second barrel, approached it with some reluctance. They felt that we were, all of a sudden, taking or proposing to take a disproportionate amount of the water that they were delivering or were able to deliver. They had not really completed the Colorado River aqueduct to its full capacity, and, at the time we joined, they were delivering a little less than fifty percent of the ultimate capacity of the Colorado River aqueduct. The aqueduct itself and its tunnels were big enough to deliver the whole load, but they had a number of pumping plants along the aqueduct that had not been completed. Altogether that water is raised about 1600 feet in a series of pump lifts, and the pumps and pipelines from the pumps up into the aqueduct were built to about half capacity. The other units were not added until just a few years ago.

Metropolitan's directors were afraid that San Diego's

demands for water and the rate that we were growing would require them to go to the expense of completing those pump lifts and all those facilities much earlier than they had contemplated doing, and much earlier than they would need it if it were not for San Diego. They kept pointing out to us that we were only paying ten percent of taxes, but we were already, at that time, using half of all the water that they were bringing over to the coast.

We pointed out to them that they were looking at it from the reverse position; that while we were only paying ten percent of the taxes, we were buying half of the water that they had for sale and which, except for our purchase, would not be sold. That was a very good strategy except that they then took the position, "Well, that's fine. Let's raise the price of the water and reduce the amount of taxes." And since then, they have followed out that program. So when we joined, we paid eight dollars an acre foot for water from them, wholesale, and now we pay thirty, which is a substantial difference. And we do not get credit, unfortunately, on our preferential rights for the money we pay into them for purchase of water. We only get credit for the amount we pay to them for taxes, and, at that time, we were paying approximately ten percent of the taxes. But that's gone down now to less than eight percent. So we've been losing water rights based upon taxes paid but contributing more and more to the capital part by the purchase of water.

Well, at this time, you see, we had this problem with our own area and were running into reluctance on the part of Metropolitan, which was not enthusiastic about giving us the passage of a bill allowing us to take more of the water and hurrying the day when they would have to spend more on their facilities.

In the meantime, though, we were carrying on negotiations with Washington and particularly with the Navy Department. We were trying to get a favorable climate there so that, if we introduced a bill, there would be a fair chance of getting it through. It certainly could not be passed by the Congress if both the Navy and the Reclamation Bureau opposed it and would not back us up in the need for this additional federal money. Even though we were more than willing to repay the entire amount, it would take that much capital as far as the federal government was concerned, and so they hesitated to do it unless they were convinced that this was the proper place to invest that quantity of capital. It was a serious consideration because they'd have to wait for forty or fifty years to recover it back from us.

So, we got the Navy somewhat interested and the Navy was friendly to us and we began to gain a little in Washington with support for our position. I think we began to gain both because the Navy helped us out and because of our contact with the Department of Justice. I went to

the Department of Justice shortly after I became general counsel. Phil Swing was the original counsel for the Water Authority and when he resigned in 1948, I replaced him as general counsel for the Authority. Before that, of course, I had been one of the directors representing the Helix Irrigation System. When I became counsel, I took this thing up directly with the Attorney General's office and asked their comments upon the problem in which we found ourselves with their ownership of this line and our needing to use that line and duplicate the second barrel in their right-of-way and hook it up to their facilities.

The Attorney General concurred with us that it really could only be done through a federal project; otherwise we'd have to abandon the plan and just get another right-of-way someplace else and build another aqueduct. Of course, that would mean wasting the money that was put into these bifurcated structures and the full-sized tunnels and the siphons. So, we were making headway in getting the federal government to agree that this was about the only way the thing could be done without resorting to the uneconomic approach of abandoning these full-sized facilities.

In about 1950, we had finally got to the point where the Secretary of the Navy agreed to come out here and have a meeting with us. That was Secretary Dan Kimball. He agreed to come out here and have a conference with us on the ground. He spoke with local Navy people and looked the

thing over and came to a conclusion as to whether or not the Navy would back this proposed project.

Now at this time, we had not yet gotten Metropolitan to agree with this approach. They rather took the attitude that it would be better if we did abandon this Navy project and go ahead and acquire a new right-of-way and build a line that would be exclusively our own and would not be subject to this ultimate recapture by the government if we fell down. Their attitude was that it has always been Metropolitan's policy to build its facilities without government help and government interference. Now, they were accustomed to that and were sort of embarrassed, I think, by the fact that one of their principal agencies was imposing this upon them. It meant their half of the line would be built by the federal government instead of by the local governmental agency, even though we ultimately would pay for it.

So they were very lukewarm if not antagonistic to this approach, and this particularly was the attitude of the president of the Metropolitan board at that time, Mr. Joseph Jensen. Mr. Jensen and Mr. Heilbron are quite similar people. They are both strong-minded. They're opinionated and stubborn, but they both think of themselves as being towers of strength for their particular viewpoint, and Mr. Jensen's particular viewpoint is to protect Metropolitan and its financial position as used by the taxpayers of the

City of Los Angeles, which Mr. Jensen represents on the board.

Mr. Heilbron, on the other hand, has always been the chairman of our board and has always been our representative upon the Metropolitan board since we joined them, and as a representative of the San Diego County Water Authority, he and Mr. Jensen have frequent exchanges of viewpoints.

Their viewpoints were diverse, particularly regarding the construction of this second barrel to the San Diego aqueduct. Mr. Heilbron was going to get it through, and Mr. Jensen was going to resist it and not going to support this thing for us. And so here was the Secretary of the Navy coming out to review this whole situation and make a decision as to whether the Navy would support the construction of this second barrel, and the Metropolitan, being the parent organization for us as far as we're concerned, arranged this meeting and arranged to entertain Mr. Kimball at breakfast at one of the private clubs in Los Angeles. Mr. Kimball was to arrive the twenty-fourth of December early in the morning; the breakfast was set up, and Mr. Heilbron was given the message by a telephone call the previous evening that there would be a breakfast at the California Club at seven the following morning and that Mr. Kimball would be briefed about this problem by the directors of Metropolitan. Mr. Heilbron, being a director of Metropolitan, of course, was permitted to attend.

So Fred called me up in the evening at my home and said, "Can you get down here about five o'clock in the morning at my house and pick me up there and see what we can do to conduct ourselves at this meeting?"

So I agreed to take him up there and we went into the breakfast at seven o'clock in the morning the day before Christmas. It was quite obvious to Fred and me that this thing was pretty well rigged to present the viewpoint of Mr. Jensen to Secretary of the Navy Kimball and not the position of San Diego. We maneuvered ourselves so that, while Mr. Jensen sat on Mr. Kimball's right, Mr. Heilbron and I sat right across from him at this breakfast table.

The breakfast was ordered but I didn't dare eat a thing because I knew the load was going to be on me for this particular situation although Fred was ready to back me up. I knew that someway or other, we were going to have to break into this thing. Of course, I had no position at all at Metropolitan. I was merely counsel for this little member that they had down there at the end of the line. But we sat directly across from Mr. Kimball and toward the end of breakfast, Mr. Jensen introduced us all.

Then he said, "Mr. Kimball, we want to discuss this matter with you and give you our position."

I butted right in; I figured that it was now or never, and I said, "Mr. Kimball, Mr. Heilbron and I are from San Diego and we're the parties in interest in this

thing. We are the ones that have a very serious problem and we would like to present to you our position and then let Mr. Jensen tell you what Metropolitan thinks about it."

So Kimball says, "Go ahead; I'd like to hear it."

So we started right in. We didn't give Mr. Jensen an opportunity to say anything until we had belabored this situation and fully presented to Mr. Kimball the dire position in which San Diego would find itself unless we were successful in getting this.

Then, after we had completely exhausted ourselves on our subject, Mr. Kimball said, "Well now, Mr. Jensen, I presume that Metropolitan recognizes this situation and is willing to go along with it."

Mr. Jensen said, "Well, we haven't come to a conclusion. We haven't agreed."

Mr. Kimball said, "Well that's all you need to do. All the Navy needs to know is that you'll pick up your share of the northern part of this barrel and it looks to me like it's a good proposition and the Navy can endorse it. Now I've got other business to attend to and I appreciate the breakfast." And Mr. Kimball got up and walked out.

Mr. Jensen turned to Fred and he said, "Fred. All right, you apparently won this round, but look out for me the next time we disagree."

The next time they disagreed was over the construction

of the East Branch of the California aqueduct, which we're still debating with Mr. Jensen.

However, as a result of this breakfast meeting, the Navy was instructed to back us up on this situation and the Reclamation Bureau was perfectly willing. They liked to build things, and their position was that if we got a bill through Congress and the Navy requested them to build it, they'd be glad to do it. So we introduced a bill in Congress, and, at that time, our congressman from San Diego County was a young chap named Clinton McKinnon. He was a real go-getter and did a real swell job of putting this bill through.

In the Senate at that time, we had Knowland, who was the senior senator from California, and Richard Nixon, who was the junior senator. Knowland was from Oakland; Nixon from the Los Angeles area. Nixon took a real positive position and this was a great help to us too. Knowland sort of went along, and I don't mean to discount his assistance because he was quite influential in Congress, but it was mainly the work of our congressman, Clinton McKinnon, and Dick Nixon. They belonged to opposite parties but they worked very hard and they got this bill through for us. Again, I have to mention Fred Heilbron who appeared before the Congressional committees and did a real swell job selling the congressmen on the necessity for this line.

The outcome of it was that the bill was passed and the money appropriated to build the second aqueduct under a repayment contract. The terms were that we would not only repay the principal over a fifty-year period but that we were to pay interest on the deferred payments at whatever the government's borrowing rate was at the day that the contract went into execution. That came out to be 2.599%. The actual result of it is that we got a very fine deal. We are paying for the first aqueduct without interest and the cost of the second aqueduct, which is a little more than the cost of the first aqueduct, will be repaid with 2.599% interest. That is less than 2% overall for the government financing of this first and second barrel of the San Diego aqueduct.

We got that bill through in 1950 and construction was started after the contracts were worked out and signed, and the second barrel was completed and delivering water to us in 1952, just five years after the first delivery of the first barrel. And, by 1957, we were planning for the second aqueduct.

HALL: I see. Who were the individuals that made what you might call the second Washington trip?

JENNINGS: Well, that was myself, Joseph L. Burkholder, who was our first general manager and chief engineer of the Water Authority (he was a very able man. I want to give him a lot of credit for our success in getting the

thing through), and Mr. Heilbron. Mr. Burkholder was familiar with Washington. He was a former engineer for the Reclamation Bureau and knew his way around Washington very well.

Also, in this interim, we'd had a change of congressmen in San Diego and we had a very able, energetic young congressman in Clinton McKinnon. The Authority sent Mr. Burkholder and me to Washington to get the ball rolling. And with the help of McKinnon, we got a bill introduced that would authorize the construction of the second barrel to the first aqueduct. I stayed there until the bill had cleared through the Bureau of the Budget and until we had negotiated a proposed contract with the Navy. I was there nearly three months. Burkholder was back and forth. McKinnon, of course, was there in Congress, and whenever we came to Congressional hearings, we would immediately get hold of Fred Heilbron and have him come out [to Washington] because he always did real well with the Congressmen. So this was mainly the Water Authority group. The first Washington entanglement and success was engineered by the city; the second was by the Water Authority. In the meantime, it had become responsible for the whole thing.

HALL: What men took the initiative in seeing the need for a second barrel for the San Diego Aqueduct?

JENNINGS: Mr. Heilbron. No sooner had the Water Authority been formed and the first barrel constructed and put in

operation than Mr. Heilbron began pressing for the second barrel. The first barrel actually would have never been built at its present capacity unless we had done something about it because it had been designed by the Navy and designed at a size only to supply the estimated military needs in San Diego County. However, in the actual construction, after the City of San Diego had guaranteed to repay the cost, we were able to have the tunnels built at full capacity and have bifurcated structures at the end of each tunnel. That is, it provides an extra nozzle to which a second barrel could be attached. The pipe was too small though. It was just half of what was designed and very, very soon after our formation, we saw that within a very few years, we would need to double its capacity. That is, we at the Water Authority saw it.

The county agencies who belonged to the Water Authority were very much in favor of it, but the City of San Diego still had this conservative position that it was only interested in a water supply big enough to take care of the city's needs. And it was quite a chore to show the city officials that, while they were, of course, basically responsible for the best interests of the city, that the best interests of the city required that the surrounding area of San Diego County also be developed, in that it be permitted to grow and the only way it could grow was through a water supply.

CHAPTER V

EXPANSION OF THE WATER AUTHORITY AND THE METROPOLITAN WATER DISTRICT; AND THE NORTH-SOUTH WATER CONTROVERSY

With the completion of the second barrel of the first aqueduct, we had, at least within reason, a fairly adequate quantity situation for importing water into the area, although the growth of the San Diego County population and economy was going along in amazing strides. Just as an example, when the Water Authority annexed to the Metropolitan Water District in 1946, the assessed valuation of the area of the Authority was two hundred and seventy million dollars, or thereabouts. Two hundred and seventy million dollars of assessable value. This year, some nineteen years after annexation, the assessed valuation of the San Diego County Water Authority area is in excess of one billion eight hundred million.

Now the population has also increased in the area from around 250,000 at the time of annexation to an excess of 1,250,000. That growth took place so rapidly, and was really unexpected as far as the local people were concerned, that in the efforts to keep up with the growth, to provide the facilities for this rapid growth, everyone was just about half a jump behind the demands for water.

Then a rather peculiar change in the philosophy took place. I don't know that that is particularly the right word, but it's probably appropriate to describe the change that took place. But a change took place in the philosophy of the people who were involved directly in the management of the water facilities and utilities of all kinds and particularly the directors of the Water Authority.

When the Authority was formed, it was considered to be a source of supplemental water to the existing agencies and to their existing water supplies. Remember that, until the water was first imported by the Water Authority, the entire economy and population of San Diego survived on local water. And the purpose of forming the Authority was to provide means to supplement those existing supplies for those developed agencies by importing an additional quantity of water that they could use in connection with what they already had. The first Board of Directors of the Water Authority and the organizers of it viewed it as that and nothing more. We were not going to develop new areas or new agencies. We were going to supplement those already existing. The first philosophy, then, of this newly elected Board of Directors, who were inexperienced in this field, was to conserve the water that could be imported and to use that water to develop already existing agencies and facilities in already developed areas.

So the original members were all agencies that had,

up to then, a substantial water supply and who needed some more in addition to what they had. Beginning at the north end of the county, the original agencies were first the Fallbrook Public Utility District, which had water rights in the Santa Margarita River and which subsequently became a matter of considerable litigation with the United States. It also had water rights in the San Luis Rey River, and it had a fairly adequate quantity of water for the development that had taken place in the area. The City of Oceanside was next but there were no areas in between Fallbrook Public Utility District and the City of Oceanside. Down in the southern portion of the county, there was the City of San Diego, of course, the Helix Irrigation District, National City, and Chula Vista. There were three other small members, the Ramona Irrigation District, which withdrew before we annexed to Metropolitan, the little Lakeside Irrigation District, which was an original member and stayed all the way through until it was absorbed by the Rio San Diego Municipal Water District, and the City of Coronado, which also withdrew before membership was obtained in the Metropolitan Water District.

These were all long-established operating agencies which had been able to survive on the water that they could produce themselves. So the original directors took the position and adopted the philosophy that any areas wishing to annex to the Water Authority and Metropolitan

must have a substantial supply of water of their own and would be in need only of some supplemental water to piece-out and aid in supplying the area which had been developed. Now this left, really, the bulk of the area on the western slope of San Diego County, the area that can be irrigated with water from an imported source, without water.

With this type of philosophy, for many of these areas, all possibilities of expansion and development were out of the question. So there began to be a clamor from these areas to the Board of Directors of the Water Authority for admission into the Authority and the Metropolitan Water District. The attitude, though, of the directors was that that would spread the quantity of water too thin in comparison with the demand. These areas were large. They were agricultural areas, and there was question as to whether they could afford to pay the taxes of the Water Authority and Metropolitan and whether they would truly benefit by being annexed to the Water Authority. The Board of Directors of the Water Authority determined that was a matter for the directors themselves to decide rather than for the people that would be affected by membership to determine. So there was a conflict throughout the area, whether the Water Authority would expand and permit these people to come in and have their chance for the water, or whether we would remain a fairly small area of developed economy and with a fairly substantial population and

continue to use expensive imported water merely to supplement local supplies.

This conflict was not limited to the areas of the San Diego County Water Authority. The same conflict was going on in Metropolitan. Metropolitan was originally thirteen incorporated cities, and they didn't expand until after and with the annexation of the San Diego County Water Authority. That was a departure from the concept of being a group of cities who needed some supplemental supplies for their ultimate development. We were all looking at it as though there was no more water ever to be developed except the million two hundred and twelve thousand acre feet that Metropolitan had from the Colorado River and that we must nurse and protect that water supply and not expand the area to overburden what could be supplied from this source of water.

The pressures, though, upon both the Metropolitan and the San Diego County Water Authority were from these people who were going into areas of the county or the Metropolitan area that did not even have local water and were developing a very risky type of economy. They then began casting around for some way to get water, and the need became so great that first the Water Authority, and then ultimately Metropolitan, broke away from these confines of taking no area into their boundaries except those which already had a fairly substantial water supply.

The Water Authority expanded, and, once it got the second barrel of the first aqueduct constructed, it began contemplating a second aqueduct. The second barrel was constructed so rapidly, that the first water from it was received in 1954, and, by 1957, the Authority was contemplating and actually did call for an election for thirty million dollars in bonds to build the second San Diego aqueduct. This was not accomplished without a lot of soul searching on the part of the original water authority directors. They were fundamentally conservative people.

The leader of the group against taking in area on a sort of a let-anyone-join-that-wished-to basis was Arthur Marston whose family were old-time merchants. They had the big Marston Department Store in San Diego. They were very well thought of, but Arthur Marston took the position, very sincerely, that, if we permitted everyone to join the Water Authority, we would get ourselves very rapidly into a position where there was no further water to obtain. He believed the demands upon the supply that we had would greatly exceed what we could ultimately deliver and that we were heading for a very dangerous situation where, someday, in the fairly near future, we would have demands upon us that we couldn't fill. People would have been brought in to settle and bonds would have been voted to put in distribution systems and a terrible situation might result that would blacken Southern California's future for

years. He sincerely felt this, and, of course, there is, as a metter of fact, a possibility that this dire result might come about.

One of the things that we did in San Diego County, in trying to resolve this fate amongst ourselves, was to seek counsel from Metropolitan and determine what they felt about the same thing. Their attitude had been, until we joined, not to permit anyone to join except cities that already had a substantial water supply. And we implored them to establish a ruling, which we could fall back on, that they would not take in any additional areas or that, if we were going to take in any area that wished to join, that we do just that and lay our plans to acquire additional supplies and to see how we were going to take care of them. The same kind of a debate was going on among the Metropolitan Board members.

Finally, the Metropolitan Board held a meeting down at Laguna. They invited all areas of the Metropolitan, such as ours and the various areas in Los Angeles County and Orange County, to attend this meeting of their board at Laguna. From that board meeting came what is called the Laguna Declaration of the Metropolitan Water District. Basically, the Laguna Declaration states, in effect, that we will take into the Metropolitan, and into its members' boundaries, any lands that are determined to be areas of proper future development without regard to the size and

without regard to our local imported water supplies. That means any place on the California western coastal plain below the Tehachapis in southern California. We will take in all such areas and the Metropolitan says we will dedicate the Metropolitan Water District to acquiring and serving that property with whatever its water requirements may be and doing whatever we have to do to accomplish that purpose.

Now, this was a very pious declaration, but, of course, it was another matter to implement it. In the early '50's, the State of California had approved the California Water Plan, but had not implemented it with either financing or any method of constructing it. The Feather River Project was considered to be the first of a staged development for this California Water Plan, and, of course, the basic idea of the plan was to bring water from areas where there was a surplus and carry it to those areas where there was a population surplus and the water supplies were deficient.

HALL: Was there any significant opposition to what you call the Laguna Declaration, at the meeting in Laguna or afterwards? And what was your particular role in the formation of the Declaration?

JENNINGS: Well, there was no opposition to it; the opposition in Metropolitan had been to the annexation of additional territory. After the San Diego County Water Authority was admitted to membership, Metropolitan directors

came to the conclusion that they had committed the water supply as far as it should be committed. So they took the position that no more areas would be admitted into membership.

Now, at this time, the Chino Basin Municipal Water District and the Pomona area, a fairly substantial area in Los Angeles and San Bernardino counties, were petitioning for admission. And, as a matter of fact, they were threatening even to go to Sacramento and try to change the Metropolitan Water District Act to compel the Metropolitan Water District to admit into its membership any area in southern California that could meet the terms and the conditions of Metropolitan that were prescribed for them. This effort might have been successful, but the San Diego representatives on the Metropolitan Board, with some others, pressed for the admission of these areas in the membership even though it appeared, and appeared to us to some extent, that we were perhaps over-committing the water supply.

As I said, however, at this time, the State water project was just in its first stages of being developed and being talked about and it gave all of us a hope that we could supply our entire area and we didn't want to take the position of quitting. I say "we" because this was the policy of the Water Authority by the time I was its legal representative instead of its director. So, we tried to get the Metropolitan Water District to change its

position and state that it would take into membership any areas of southern California that could meet its requirements, just as Chino and Pomona and those areas were clamoring should be done.

The Board of Metropolitan chose Laguna as a sort of a neutral grounds at which to hold a meeting and invited us all to come there and have an all-day session to arrive at some sort of a conclusion. We did. We sent not only our directors on the Metropolitan Board, but others from the San Diego County Water Authority who were interested and felt that there should be a broader vision evidenced by the Board itself. And out of that group came this statement that we will take these areas into our membership and any other areas along the coastal plain in southern California that could meet the terms and conditions of membership. And then the statement further said that the Metropolitan Board commits itself to the policy that when and wherever additional waters are needed, the Metropolitan will dligate itself to bring those waters into southern California to the extent necessary to meet the demands of this new area and all of the area that was annexing.

I had no particular active part in that, but along with nearly everyone who had attended the conference, we had suggestions from everyone and then the suggestions were referred to the Metropolitan staff to come up with this declaration of policy.

HALL: Oh, I see.

JENNINGS: And there was, frankly, no opposition to it. Everyone, I think, by this time, was convinced that the only limit to southern Californian development was that imposed by the quantity of water we had available. And if we couldn't get enough from one source, we had to go out and get it from another.

So the philosophy having once been established, with some serious doubts on the part of many of the Water Authority directors in San Diego, the Authority began to expand and Metropolitan began to expand. Metropolitan went into San Bernardino County and into Riverside County and took substantial areas in those two counties into their boundaries. It ultimately went up into Ventura County and annexed considerable area there and the San Diego County Water Authority took in practically any area where it was determined that the inhabitants could stand the tax and take the chance and build the facilities to utilize the water.

Now this resulted in a very rapid growth of the Authority, and, of course, more and more water was consumed. Fortunately, we were still able and have been able to get water substantially in excess of the water right which we have in the Metropolitan Water District. Our water right is basically ten percent of Metropolitan's total rights, but ten percent of 1,212,000 acre feet is about half of the quantity of water that we were taking up to the time that

we built the second aqueduct. As of now, we're exceeding that by at least once and a half of the amount of water that we were taking and distributing in San Diego County without any right to insist upon the delivery of that amount of water.

Now, this imbalance in the Metropolitan Water District set off another long and involved argument as to the philosophy of Metropolitan in the pricing of the water. Up until this expansion took place, Metropolitan had maintained quite a low water rate and supported its debt servicing and a great deal of its operation expense through the levying of taxes. And, of course, the right of the members of Metropolitan to build up the right to demand a specific quantity of water is based upon the taxes paid by the individual areas of Metropolitan as compared to the total of all taxes paid. Each agency has that proportion of all the water that is available on the basis of the amount they have paid in taxes and not on the basis of water sales.

San Diego was taking, at one time, twenty-five percent of all water sold by Metropolitan, and with the expansion of San Diego County and the expansion that Metropolitan had permitted as a result of this Laguna Declaration, it became obvious that areas such as San Diego were taking a great deal more water than they had any preferential right to take and were impinging upon the rights of the original members of Metropolitan, particularly that of Los Angeles.

Los Angeles until quite recently has taken only token deliveries of water from Metropolitan. Los Angeles has developed its own supplies in the Owens River Valley, and, as a matter of fact, right now is proposing to double the delivery capacities of water from that source which is water entirely belonging to the City of Los Angeles. So, as yet, Los Angeles is not basically dependent upon the Metropolitan supply for its needs.

Now when the Metropolitan Water District was originally formed, Los Angeles was entitled to about seventy-five percent of the water because it was paying about that amount of all taxes collected by Metropolitan. With San Diego coming in, and the expanding areas coming in on a tax contributing basis, which had been the financing Metropolitan, it was obvious that we and others would keep building up a water right. The only place that water right could come from, because we were limited in the total overall quantity, was from the surplus water right of the City of Los Angeles. That is, water that it was not using. And we have lived in San Diego County upon water that the City of Los Angeles was entitled to take but did not for the reason that they had their own supplies.

Now that wasn't a very popular thing, of course, with the Los Angeles representatives on the Metropolitan board. They could see that, although Los Angeles had originally underwritten and made possible an arrangement which was to

guarantee to Los Angeles all the water its citizens would ever need, this guarantee was being eroded away by the rights these other areas were gaining without any known way of increasing the overall quantity of water. So, the Los Angeles directors began to be critical of the fact that San Diego, a Johnny-come-lately in the organization, was taking so much of the water available by building up a rival economy, a competitive economy, to that of Los Angeles with water that Los Angeles had made available and was selling to San Diego at an exceedingly low rate. The original rate that we paid for water was $8 an acre foot, which was peanuts and was the cheapest water that we could possibly get.

So the Los Angeles directors of Metropolitan began a campaign to raise the water price and reduce the taxes. The argument was something along this line. When we joined Metropolitan, we paid $8 an acre foot for water and the tax rate for Metropolitan was fifty cents for $100 of assessed valuation. As of today, and this is the change that has taken place in all these years, we're paying approximately $30 an acre foot for water and fourteen cents on tax rates to Metropolitan.

Now, this was all right in a way. We couldn't complain because we were getting a great deal more water than our tax contribution would warrant, but Metropolitan began to service its bonded indebtedness, and, of course, paid

for its operating expense and all that sort of thing out of the water charges. So the burden was beginning to be reversed a little bit. We were paying a high rate for water, and that money that we were paying for water was then going to retire the Metropolitan's debt and to pay for its expansion and the construction of new facilities. Some of the facilities, of course, were for us, but we were paying into the capital structure of Metropolitan through water prices but getting no capital position. We were not increasing our water rights, and we felt that this was an injustice. We thought if Metropolitan was going to retire its capital debt and increase its investments through the use of water rates, then those people paying those water rates should be getting a little larger ownership in the organization as represented by the water rights.

So this was one of the items of considerable acrimony between the San Diego area and the Los Angeles area, that is, between the San Diego Water Authority directors and the directors of Metropolitan who represent the Metropolitan area of Los Angeles County, which is more than just the City of Los Angeles. We appeared before them many times, and our staff worked out many approaches towards trying to correct this admitted imbalance between water rates and tax levies. But the Metropolitan people stood very firm and kept together as a unit and they have prevailed.

We thought many times of going to the Legislature and having the Metropolitan Water District Act changed so that we would get the same credit as the rest for that portion of water rates that goes to retirement of capital indebtedness and for the investment of new funds and the creation of new capital facilities. We feel that we could probably be successful, because we think that it would be only fair to have the water ownership based upon the contribution to capital, regardless of the source from which that contribution of capital was made.

But we've never done it because the ability of the majority of the Metropolitan directors to take steps against the Water Authority in punishment for having kicked over the prices is considerable. There is no way we can force Metropolitan to participate in construction of new facilities for delivery to San Diego. Our rights are to build what we wish to build for ourselves and to then attempt to persuade Metropolitan to contribute a certain amount of money or build portions of what we need for our facilities. But we have a very minor position in the vote on the Board of Directors and so we're dependent, to a considerable extent, on the good will and sense of equity of the Metropolitan directors towards this area, which is not as homogeneous to the Metropolitan control areas as Los Angeles and Orange Counties and its various other members. But we've had sort of a running feud particularly

between our chairman Mr. Heilbron and the chairman of Metropolitan, Mr. Joseph Jensen. And I suppose we will for many years until this whole southern California area is pretty well one homogeneous area.

And this little feud is pretty well exemplified in the struggle between San Diego and the Metropolitan District in connection with the State Water Plan. Metropolitan, even though they had taken this position represented by the Laguna Declaration and maintained that they would always supply with water the area that fell into their boundaries, from the start took a very dim view of the State Water Plan and the development of the State Water Facility. The Metropolitan District had a legitimate position in that it was obvious that the area most in need would be southern California and the area that would take most of the water would be southern California. Therefore, the area that would pay most of the cost of this facility would be southern California--Metropolitan Water District and all of its members. Feeling that we would have to pay the greatest portion of the cost, the Metropolitan wanted to be sure, absolutely sure, that we would get the water that we were bargaining for. And one of the problems throughout the state in the approach towards the State Water Plan was the fact that we would be taking water away from the northern portion of the state, where water was presently surplus to the needs and requirements of those areas, and

taking it down here.

So the northern part of the state insisted that, in doing that, that area from which the water was taken should never suffer by reason of the fact that its water was transported away into the south. This was the so-called "area of origin" or the "county of origin" battle. It went on for a number of years and delayed the start of construction of the state water facilities until it was finally resolved, though not to everyone's satisfaction. Los Angeles and the Metropolitan Water District felt that if this project for delivering water to the southern California area which was going to pay the major portion of the expense for the development was based merely upon Legislative authorization that any future Legislature could as easily recall the water and change the rules and either charge more for it or recover the water and use it in the northern part of the state.

So Metropolitan wanted a constitutional amendment that could not be changed without the vote of the people. And, as we had the great need, so we have the great majority of the people and we could control anything that had to be changed by a constitutional amendment. We could not control the Legislature because, until the current Supreme Court rules on reapportionment, the southern California area that was within Metropolitan elected five of those senators, the other thirty-five being elected from other areas of

the state. We could fairly well control the Assembly because we had about an even balance in the Assembly, but the northern California senators had the veto power on anything that we attempted to do toward protecting the big investment that we were going to be called upon to make in this water transport thing.

So the Legislature passed and put into effect the so-called "County of Origin Laws." The Attorney General ruled that those laws meant that, while the state could develop facilities to take away water from the north and bring it south, the people in the areas from which that water originated had the right to recapture any quantity of that water that they might ever require for their ultimate future needs. Now with that facing us, we felt in southern California, and Metropolitan was very definite about this, that we could not risk either the capital to bring this water south or the possibility that we would develop a huge economy down here that was dependent upon that water supply when, according to the law, that water could be recaptured at any time it was needed in the northern part of the state.

So we had this big hassle about a constitutional amendment. The north would not support the constitutional amendment which they felt would prevent them from recapture, and they had no trust that the south would assist in the development of further supplies if the south was once

satisfied, under a constitutional amendment that the north could never recapture the water. They felt that, with an amendment, the south would turn its back on the north and the tax base and the financing that was available to the south would never be permitted to be used in the north for development of their requirements. While they agreed that there was water up there, probably in excess of their ultimate needs, the development of that water would be expensive and it would become more and more expensive as we brought more of the water south. That is because the cheapest water is always developed first and the water that is left undeveloped in any project is always the more expensive. So, if we went up in the north and developed all the cheap water that we could find up there to haul it all this distance to southern California and, under a constitutional amendment, had the right to keep it without any threat to us, the north could see that they would possibly shrivel away economically and that they would become a wasteland--sort of similar to the situation that had resulted in the Owens Valley. A great deal of criticism was directed toward Los Angeles for this so-called "rape of the Owens Valley," and it was used as the horrible example of what we were trying to do in this insistence in trying to get a firm, inviolate water right by way of a constitutional amendment if we were to build these facilities.

The California Water Development Project had come to a dead stop on the conflict over this constitutional amendment that those in southern California wanted to protect southern California in the retention of the water that would be available from the project. They argued on the basis that southern California would be putting in most of the money into the project, and in view of these county of origin laws and area of origin laws which have been adopted and interpreted by the Attorney General to mean that the counties of origin would have the right to recapture the water if they ever needed it, southern California felt that it must have a constitutional amendment. We, in southern California, felt that would assure us that once we had invested the money in this water project, we would be able to retain, against anyone, the right to the continued export of the water.

Now, the northern area of the state opposed that very strongly. Their position was that the only way they could force southern California to participate in northern California development, for its uses, was to have this right of recapture. "We'd foreclose the mortgage," was the expression that they used, and, "If we foreclosed the mortgage, you would have to help us get water up here to replace the water that we would take back from southern California."

This was a stalemate. For three legislative sessions

in a row, no money was appropriated to do anything regarding the State Water Project because of this deadlock between northern and southern California.

Well, this battle went on from about 1951, which was the session which approved the State Water Plan, through 1957, and up to the 1959 legislative session, at which time the Burns-Porter Act was passed. It is the authorizing act for the construction that's now going on and which should be completed in 1972. The State Administration and the State Legislature grappled with this problem for all those years. Every legislative session, the most important thing on the agenda was what are we going to do to try to resolve this water battle. Everyone knew that it was absolutely essential if the economy in southern California was to be supported and permitted to expand. As it was, it was expanding willy-nilly, and they knew there would be a terrible smashup in southern California unless water was available to the people down here and that such a smashup would strike the very basis of the entire state financing program because this was where the wealth was in greatest concentration.

So this situation had to be resolved and the method of watering southern California had to be concluded and agreed upon. There was tremendous pressure to do it, but the battle became not only one of economic competition between the Bay area and the Los Angeles area, but a very

highly emotionalized problem. The northern California people were becoming embattled and saying they were going to protect their water against any raid by southern California at all costs. There was considerable talk about dividing the state in half and letting southern California go and try to find water of its own, and the debates were charged with very intemperate statements from both sides. It was a real mess.

During the 1957 legislative session, Governor Goodwin Knight, who is a Los Angeles man, concluded that he'd have to do something to settle this problem. And to him, like many politicians, the way to do it seemed to be to appoint a committee and have the committee resolve it. So, the Governor put together a committee of fourteen, every one of whom was a lawyer and whose chief function was water problems. It was quite a peculiar committee. It was called the Water Lawyers Committee and it was evenly divided between Democrats and Republicans. It was about evenly divided between members of the Legislature and outsiders, and it was about evenly divided between the north and south. In fact, it was so evenly divided that its sessions finally wound up in a rather well-edited and well-prepared statement that half of the group agreed upon and the other half refused to sign. This was presented to the Legislature as the final report of the committee.

It's interesting to review who these people were. The

chairman was an attorney from San Francisco named Burnham Enersen, a very able attorney. There were four senators on the committee: Senator [James] Cobey from Merced, Senator [James] Cunningham from San Bernardino, Senator [Edwin] Regan from up in Shasta County up in the extreme north of the state, and Senator [Richard] Richards from Los Angeles. You see, there were two southern California senators and two nothern California senators. There were three assemblymen: Assemblymen Bruce Allen from Santa Clara, William Biddick from Stockton, and [Patrick] McGee from Los Angeles. There the north outvoted the south a little bit--two to one. The Attorney General had a representative. Wallace Howland was on the committee and then came the so-called "outsiders." They consisted of Gilmore Tillman, who was the Chief Counsel for the Los Angeles Department of Water and Power, Charles Cooper, Chief Counsel of the Metropolitan Water District, Hal Kennedy, who was County Counsel of Los Angeles County, Jack [P. J.] Minasian from Oroville, who is an attorney representing a number of irrigation districts in that area, and myself, from San Diego. Now, this was the only group where we had the advantage in numbers over these other chaps.

We were given thirty days to come up with an answer and we were instructed to prepare a constitutional amendment that would be acceptable to both the north and the south. We battled for the thirty days, came back for

another thirty days, and then finished up with still an additional thirty days. So we were in session for ninety days. Of course, you merely need to state the question to realize that there couldn't have been an answer to it.

So we met conscientiously, and seriously applied ourselves to this problem. The Legislature was in session and the attorneys that were not members of the Legislature were all busy men, so we finally developed the practice of going up to Sacramento every Friday night and leaving every Monday morning. And we worked Friday night, all day Saturday, all day Sunday, and most of Sunday night. We became very well acquainted with each other, and we got along fairly well except we all became occasionally impassioned and a little bit emotionally aroused when we were thinking of the terrible things that the others were trying to do to us.

My job was draftsman. I was appointed chairman of the draftsmen committee which meant that I practically did it all myself as far as drafting was concerned. We would argue all day over the language and the provisions of the constitutional amendment, then I would try to draft it to their satisfaction. I was able to get them all to go along with my draft, but we were never able to get any unanimity at all on either the meat of the constitutional amendment or its necessity.

We finally prepared a draft of what the majority of

us were willing to submit to the Legislature, but none of us were willing, really, to say that a constitutional amendment was either a necessity or that one could be drawn that would do what both the north and the south wished it to do because the conflict between them was that each wanted to protect their area against the demands of the other. To do either one was to hurt the one who didn't approve of what was being done. If you drew a constitutional amendment that protected the north, it was anathema to the south, and vice versa.

We finally came to the conclusion that, unless we could put a project together on the basis of mutual trust with little basis for pressure, that we couldn't accomplish anything. And we finally came to the conclusion that we would have to preserve the right to recapture on the part of the north, but preserve for the south the construction of the whole project at state expense through a state bond issue instead of money paid out as it was required for the project.

HALL: I see.

JENNINGS: And basically that's what happened. And while we did present to the Governor and to the Legislature, a draft of the constitutional amendment, we did it with very half-hearted backing, even from ourselves.

But I think the most important thing about the work of this committee was that we concluded that no constitutional

amendment could be drawn that would equally satisfy the two conflicting ends of the state. It couldn't be done. That's why we concluded that, someplace along the line, somebody had to have some sort of faith that water that was surplus could be exported and that it would not be recaptured even though the law permitted it. This was because you couldn't destroy the economy of southern California after it had developed with this type of water and southern California would have to continue to remain interested in the water problems of the rest of this state and lend its financing and its backing to those water developments.

Now, once we concluded that, why, here were fairly responsible people from all sections of the state, members of the Legislature and people who were effective in water development, agreeing that, number one, you couldn't prepare an acceptable constitutional amendment; and, number two, that this could as easily be done through the Legislature as in any other way, and probably could only be done through the Legislature. But they realized that it could only be done if we had faith in each other and if we could visualize a California that was one state, and that one section of it could not suffer without detriment to the rest of it, and that anything that was good for one section was good for the rest of the state. They saw that we had to get together and coordinate our efforts because the job was so big and so complicated that it would take all the efforts

of all the people of this state to put it together. That was the report that we came out with in 1957, about the close of the legislative session.

It's always been very pleasing to me that we could at least agree upon that sort of a report, although we couldn't agree upon a constitutional amendment, and that this was the last big battle prior to the adoption in the next session of the Legislature in 1959 of the act that put this thing together. That was followed by the vote of the people in 1960 on the bond issue that made possible the financing of the state water project.

So the Burns-Porter Act went through the Legislature with fairly good support from both the north and the south. But Metropolitan was still quite critical of it and remains critical of it to this day. The bond issue was to be presented in the general election of November 1960, and the effort between the close of the 1959 legislative session and the date of the election in November of 1960 was to obtain united statewide support for this project. Its advantage of course was mostly to southern California. In fact, we in San Diego considered that the future of our area would depend upon the success of this proposal.

So we worked very hard and worked throughout the state in support of the bond issue. Metropolitan did not endorse the bond issue until the week before the election. The week before the election, they finally came out with a

statement that, in spite of the many imperfections and problems connected with the Burns-Porter Act, they reluctantly supported the proposal. San Diego went all out and we had a very strong turnout in support of it. As a matter of fact, the bond issue carried throughout the state by the majority of votes that were cast in San Diego. It was carried by about a 200,000 majority statewide and the San Diego county vote for it was around 200,000. That was about the measure of the majority vote throughout the state, so it was adopted and it went into effect.

That was merely the start of a new problem however between the Metropolitan Water District and San Diego. The program as adopted by the Legislature set up on the record what facilities should be included. It began construction of the big conservation dam at Oroville on the Feather River. The water could be released from the dam and into the Sacramento River where it flowed into the delta of the San Joaquin and the Sacramento Rivers, which is the headwaters of the San Francisco Bay. There it was to be pumped out of the delta into a big canal that ran down to the Tehachapis, where the water was to be lifted about 3,000 feet and sent through a tunnel into the Antelope Valley north of Los Angeles. There the water was to be divided into the East Branch and the West Branch of the aqueduct. The West Branch was to run from the outlet of the Tehachapi tunnel directly south and into the Los Angeles area, while the East Branch was to go easterly through the

Antelope Valley over to the San Bernardino Mountains and be brought to a tunnel through the San Bernardino Mountains. From there it would go down into a reservoir at Perris in Riverside County, where the state project water would be available to San Diego County Water Authority facilities for delivery.

Metropolitan immediately began a campaign to eliminate the East Branch, and their first approach to it was that there was no use running an east branch over to an area in Riverside County because that was the area through which the Colorado River was brought to the west coast. So they said what should be done for the sake of economy was to end the northern California water facility in Los Angeles and then use that water for distribution in the Los Angeles area and transfer and exchange their rights in the Colorado River and release the Colorado River for Riverside and San Diego Counties. We would get along on the Colorado River water and they would get along on the northern California water. The detriment of that to us was twofold.

In the meantime, in 1952, the State of Arizona had brought the suit against California to adjudicate the rights of the two states in the Colorado River. The Arizona contention was that California, by the Limitation Act which it adopted as a requirement to get the Boulder Canyon Project Act through, limited itself to 4,400,000 acre feet and that that was all the water that we were

entitled to take out of the Colorado River. Now, actually, we had contracted for in excess of 5,000,000 acre feet for all the California parties and we were importing and actually taking water in excess of 5,000,000 acre feet out of the Colorado River and using it in California. Arizona contended that we couldn't do it and there were many of us in California that had doubts that we had the rights to the quantity of water that we were taking.

Now the law of priorities for the use of the river water in this state was that the first in time was first in line, and those areas first in time were the Palo Verde Irrigation District over in eastern Riverside County and the Imperial and Coachella districts in the Mojave Desert in Southern California. Metropolitan's rights were fourth priority and San Diego's rights were fifth priority. If we were cut down to 4,400,000 acre feet, it would just cut in half the amount of water that Metropolitan could take when the Colorado River was ultimately developed. So, we saw this swap that Metropolitan had in mind of possibly half of the Colorado River water for all of the northern California water as a very dangerous thing for us. We did not propose that we would be limited to only the water we could get from the Colorado River.

In addition, the Colorado River was highly mineralized and had a high salt content in comparison with the northern California water. Our experience in using it all these

years had indicated that, unless there's heavy winter rains that will leach the salt out of the ground where this water has been used for irrigating, ultimately the soils harden up and salt up and become unproductive. You can notice it even in your home watering system, watering such plants as fuchsias. They just gradually die if you're using Colorado water and you can't leach that salt away with heavy rains. Of course, our rainfall, depending upon how you look at it, has been much less than normal. But, anyway, for twenty years, we haven't had enough heavy rains to leach the soil and we notice a substantial detriment in the continual use of nothing but Colorado River water.

So we began our second great hassle, our first having been over the problem of pricing of water and the way of crediting the monies received by Metropolitan. So we began this second great battle as to whether or not the East Branch was to be constructed so that we would have a chance to get this northern California water for which we were going to have to pay whether we obtained it or not.

CHAPTER VI

THE FEATHER RIVER PROJECT AND THE EAST BRANCH CONTROVERSY

The California Water Project as ultimately designed and approved by the Legislature in 1959, and then by the electorate of the state in 1960, spelled out just what facilities were to be constructed by the one and three-quarter billion dollar bond issue and spelled it out with considerable detail. It included, of course, five little fishpond-type reservoirs up in the Sierras on the Feather River system, the big dam at Oroville and a diversion from the Sacramento River. The water was to be run down the river to something in the vicinity of the San Joaquin-Sacramento delta and there pumped out and lifted into a federal reservoir, the San Luis Reservoir site in western Merced County, and there stored and released again into an aqueduct that came down on the west side of the San Joaquin Valley, with a branch taking off to San Luis Obispo and Santa Barbara Counties on the coast. The main aqueduct being then terminated at the Tehachapis with a pump lift to an elevation of about three thousand feet where it would run through a tunnel in the Antelope Valley--Antelope Valley being the desert area just north of Los Angeles and lying within Kern and Los Angeles Counties. As it came through

the tunnel, across the Tehachapis, the project was split into a West Branch that went down to Castaic, just above the City of Los Angeles and in the Los Angeles area plain, and an East Branch that went down south-easterly through the Antelope Valley and to a reservoir site in San Bernardino County just above San Gorgonio and the San Bernardino Mountains. At that point, the water in the East Branch was to be impounded in a lake at Cedar Springs, and then was brought down through a power drop across the Santa Ana River at San Bernardino and up the other side and then to Perris Reservoir in Riverside County, which was the terminal of the project.

The Metropolitan Water District could see no advantage, as far as they were concerned, no value, in the East Branch aqueduct system. They figured it would cost them in the neighborhood of eighty million dollars and they could not justify, as far as Metropolitan area was concerned, that expenditure for that line. The contract, however, which they had with the state, was to take a minimum of 60,000 acre feet per month of their overall delivery through the East Branch and the rest of it through the West Branch.

The area in San Bernardino, Riverside, and San Diego Counties, all of which would be most logically supplied from Perris Reservoir in the East Branch, became quite concerned that Metropolitan would prevail and that the East branch would not be built. And as Metropolitan started

out in its tactics to avoid the construction of the East Branch, the position taken was that the delivery of northern California water to the San Bernardino, Riverside, San Diego County areas could be delayed for a considerable period of time and that area could be supplied entirely through the Colorado River aqueduct with the northern California water going exclusively into the Castaic Reservoir through the West Branch and into the huge metropolitan area of Los Angeles and Orange Counties. We in San Diego, and our colleagues in Riverside and San Bernardino were greatly opposed to anything that would prevent that area from receiving the less mineralized and better quality water from northern California and be forced to take exclusively the Colorado River water with its high salt content. So we put up a real battle to change the thinking of Metropolitan.

We were successful as far as the <u>number</u> of Metropolitan directors were concerned and we were particularly successful as far as the Metropolitan's engineering staff was concerned. The engineering staff could see a great value to bringing the water, even into the Los Angeles area, from two directions and having two alternate lines. And, as a matter of fact, they have recommended and continuously recommend, as of today, that both the East Branch and the West Branch of the state aqueduct be constructed to the full capacity to meet the full demand of the Metropolitan Water District on the theory that the incremental cost of

increasing the capacity of the aqueduct both ways during its construction would be comparatively small and that the value that would result from that increase in cost would be great. You could bring the water, then, either way into Los Angeles.

Both lines, as a matter of fact, of the main aqueduct have to cross the most active and violent earthquake faults in California. The area along the Tehachapis, the Garlock Fault and the San Andreas Fault and a number of smaller ones so crisscross that area that you can't get an aqueduct into southern California from northern California without crossing these active faults. And the theory was that any line might be damaged and delivery delayed but the chances were cut in two if you had two lines, each with an equal capacity. And as long as the project called for two lines, why not build both of them to full capacity and have the flexibility of bringing in water to all the Metropolitan area either or both ways or a combination of routes. So that would mean the entire Metropolitan Water District area, including all of the southern California counties, could have the advantage of having an alternate supply to the Colorado and a supply of better quality water for mixing with the Colorado River water.

The act under which the contracts were drawn gave to all of the prospective contract owners a fixed date to enter into a contract with the state for the quantity of

water they desired. At the time that this date should arrive, and it happened to be the last day of December of 1963, thereafter, whatever water was uncontracted for would be made available again, on option, to the agencies who had contracted up to that time. Then the act further provided that any agencies who contracted for delivery of the water from the system as described in the act authorizing its construction, which included both the East and the West Branch, such agencies that contracted from either of those branches would have the right to be assured that that facility would be constructed unless they voluntarily agreed to take their water from some other source and from some other direction. So we had the built-in assurance for Riverside and San Bernardino and San Diego Counties that the East Branch would be constructed as long as there was any agency who had contracted with the state for delivery from that particular facility.

Therefore, because of the desire of the chairman of Metropolitan and its majority of directors, vote-wise, to avoid the construction of the East Branch and save the Los Angeles area a substantial sum of money, as they claim, Metropolitan began a campaign to try to persuade the few and rather small agencies who had contracted to take delivery from the East Branch to take their delivery in some other way. Metropolitan planned to take all of their water through the West Branch, even though they might have to

contribute to the construction of the East Branch, then run a major feeder-system from the Castaic Reservoir in the northern portion of the city area, beyond the San Fernando Valley, clear across the Sierra Madre foothills, By tunneling and filling, the line would parallel the foothills and could be extended to actually deliver state water as far east as the so-called Perris Reservoir.

They then, with that in mind, suggested to the agencies in the Antelope Valley and northern San Bernardino County that Los Angeles or the Metropolitan Water District would run a temporary line into the Antelope Valley to take care of their needs and would put that line in without cost to these agencies. The cost would be in lieu of what would otherwise be the Metropolitan contribution to the cost of the East Branch. They also suggested to the big contractor in San Bernardino County, which included various cities in San Bernardino County and San Bernardino itself, which had a separate contract with the state and was not a member of Metropolitan, never have been, that Metropolitan would take them into the Metropolitan District at bargain rates instead of charging them the usual annexation fee and supply them with northern California water through the West Branch and through this foothill feeder.

One of the problems was that the foothill feeder extension to the Perris Reservoir, where water would be available for Riverside and San Diego Counties, would be

a matter entirely within the control of Metropolitan, and the decision as to whether or not to construct it, to make the extension, would be one that would be dependent upon the Metropolitan Board which, frankly, we in Riverside and San Diego Counties did not trust. The Metropolitan Act is a rather peculiar act in that, while any agency is entitled to directors in number based upon a factor of assessed evaluation, those directors must cast their votes as a unit as far as their member agency is concerned. For instance, Los Angeles could have, say, ten directors and Orange County, say, five, and the Los Angeles metropolitan area could have a number of directors that would be less than a majority of all of the directors of the Metropolitan Water District Board. But those directors would cast their votes on a unit rule and, therefore, a majority of five to four directors in representing, say, the City of Los Angeles, could cast the entire Los Angeles vote. Well, the entire Los Angeles vote is about thirty-five percent of the total Metropolitan Board vote. So with a couple of other agencies with a large vote, even though the majority of the number of directors would make one decision, the vote rule could influence that decision and reverse it.

So we did not want to be dependent upon the electorate or the directors representing the City of Los Angeles and its immediate metropolitan area, which is, of course, quite

large in population and assessed valuation, and that of Orange County to determine whether or not we in Riverside and San Diego County would ever receive any northern California water. So we felt that we must attempt to assure the construction of the East Branch against the wishes of the majority vote on the Los Angeles board of directors. We welcomed the decision of the Metropolitan staff that the East Branch was essential and desirable, but we ran up against the tough, political problem that it would be costly and that, of course, the whole metropolitan area would have to contribute to that cost. And the contribution was weighted by reason of assessed valuation to such an extent that the Los Angeles area would have to pay most of it. And, therefore, as it would do them, as they contended, little good, they might be successful in preventing the construction of the East Branch.

So we concentrated on supporting the position of these small East Branch contractors not to be bought out or bought off by the Los Angeles metropolitan area in agreeing to some alternative method of securing their water. Los Angeles even offered to pump it back up into the Antelope Valley after it had fallen down into Los Angeles and they'd probably save money by doing that. But we felt that the overall picture and the fact that the project required the construction of the East Branch should prevail, and apparently it has. The Los Angeles area was never able to

satisfy all of the East Branch contractors and, ultimately, the time in which they had to accomplish this ran out, and the construction of both the East and West Branch lines, the East Branch, at least, to the minimum capacity was firmed up and the state is proceeding on that basis.

Metropolitan, however, continues the battle and they are planning the construction of this foothill feeder with a terminal in the Perris Reservoir and so the battle still goes on, although, as of right now, it appears that the East Branch will be constructed and it'll be constructed on time and we will have the ability to obtain northern California water by the year 1972.

This is of greater importance to us now than when the battle first started because in the meantime California has lost the suit with Arizona. And the result of that victory for Arizona in the Supreme Court suit will be to reduce the amount of water which Metropolitan can ultimately take, to half the capacity of its present aqueduct. We who wanted the East Branch and who worked so hard to get it, felt that that fact would be more influential with Los Angeles than it appeared to be and than it was ultimately found to be. Because the Metropolitan, when they were assured that they would ultimately lose half of the water to which they felt they were entitled from the Colorado, merely increased the contract with the state for that same quantity of water. So they still have the excuse

that it'd be better to bring it down through the West Branch, through this foothill feeder, and over into an area where it could be delivered to San Diego and Riverside Counties, even after the loss of the Colorado River water would become a physical fact as well as a legal fact.

However, as of now, the state is continuing to build the East Branch and we are fairly sure that it will be constructed and we will have what we feel to be the great advantage of being able to get a mixed supply of water. The Colorado River water has a high mineral content and because California takes it out at the end of the river, it's worse than it is farther up the river, and it has a lot of return flow. For instance, in the San Bernardino-Riverside area, their great natural water source there is the upper basin of the Santa Ana River. They have been very concerned that if they were forced to use or be confined to Colorado River water for their supplementary supplies in San Bernardino-Riverside Counties, the return flows of that salty Colorado River water would ultimately ruin the upper Santa Ana River basin. And once that basin would become pretty-well salted up by return flows from Colorado River water, we'd have the same problem downstream as the Mexicans are now experiencing south of the return flows on the Colorado River. They contend, and I think properly, that the water is of such quality that they aren't required to take it and that the United States must

do something to correct that flow. So that's the problem of the East and West Branch.

Now, we have some further problems on the California Water Project. In the San Joaquin Valley and in the delta area of the San Joaquin and Sacramento River. For centuries, all of the water from about forty percent of the area of the State of California has run down through the Great Central Valley from the north through the Sacramento River and from the south through the San Joaquin River and into the delta area where the two rivers meet. And then, after running through a number of meandering channels, it is discharged into San Francisco Bay through the Carquinez Straits area.

This water has been a source of damage to the delta. It's been either flood-flow or it hasn't been enough water to meet the water requirements in the delta. But that huge natural flow of water which used to carry fresh water out into the entrance of San Francisco Bay has been gradually reduced and controlled through, first, the construction on the San Joaquin-Friant Dam, creating Lake Millerton just at the point where the San Joaquin comes out of the Sierras and through the foothills and down onto the valley floor. That project was the first major project of the Federal Central Valley Project, and was constructed by the Reclamation Bureau and basically financed originally from, well, the United States Treasury.

It was quite an interesting thing because the San Joaquin River is the lesser of the two major rivers although its flow, at times, can be very substantial. It comes out of the Sierras around the Mount Whitney area and there are huge snowpacks in there and a considerable flow of water comes in the San Joaquin. It used to be sufficient to irrigate the whole San Joaquin Valley for a couple of hundred miles from Bakersfield down to the delta. But little by little, the flows were diminished and the areas put under irrigation greatly increased. Finally, the flow at the extreme lower end of the San Joaquin Valley became polluted to such an extent from return flows into the river that they were hardly usable.

So this water-exchange program was designed, first under the California Central Valley project and then constructed under the federal take-over of that project in the '30's, during the Depression years when California found itself unable to construct the project and turned it over to the federal government for construction. It's a rather peculiar project. The purpose was to dam the river at the Friant Damsite and the divert the major portion of the river south into the Kern River service area around Bakersfield and southern Kern County, practically to the Tehachapis. Then the second delivery of the water was to go northerly up into the Madera County area.

So two big aqueducts flow out of Lake Millerton at

Friant Dam. One, the Friant-Kern Canal, goes south to Kern County and Tulare County and the other, the Madera Canal, goes north to Madera County and Kings County, some of that area in there. This left the river practically dry. So in order to take care of the area that used to be served by the river, which was the San Joaquin Valley itself, northerly from Fresno, an equal amount of water to meet their requirements was pumped out of the delta and sent down southward. They reversed the flow of the river and sent it down through the Delta-Mendota Canal to a basin at the end of the canal. And so the picture would be that there's no longer water in the river, but a canal paralleling the river takes water out of the delta, which is basically water from the Sacramento River, and pumps it south into Fresno County, and takes the water that used to flow from the river and pumps it further south through Bakersfield and Kern County and a piece of it north through Madera County along the foothills.

Now in order to make this work, the project had to construct Shasta Dam on the upper reaches of the Sacramento River. There, three rivers run together to form the headwaters of the Sacramento. The Sacramento itself and the Pit and another one [McCloud]. But these three rivers are dammed at the Shasta Dam just above Redding on the Sacramento River. And their flood-flows are impounded and held back and then released gradually into the Sacramento River

where they get down to the delta. At the delta, they are picked up and pumped south through the Delta-Mendota Canal to replace the waters of the San Joaquin River.

Now that project is the backbone of the Federal Central Valley Project, just as it was the backbone of the State-planned Central Valley Project which was taken over to a limited extent by the federal government in the '30's. There still remains a State Central Valley Project. It's on the records. It's authorized, but none of it has been constructed. But it was the source of the authority to issue revenue bonds to assist financing the construction of the Oroville Dam, and the state administration was substantially criticized for building that reservoir with revenue bonds. The only authority for the revenue bonds being that the Central Valley Project authorized revenue bonds, and when the present state water project was authorized, it incorporated, by reference, the old Central Valley Project Act. So the authority was there--I think to the surprise of many people. However, it was very helpful because without those revenue bonds there probably would not have been enough in the G.O.--the General Obligation bonds--authorized by the election in 1960, that is the one and three quarter billion dollar issue, to have constructed the whole project.

But the trouble spot in this picture is the bottleneck at the delta where water was being pumped out to be sent

southerly through the Delta-Mendota Canal, which water was released from the Shasta Reservoir and discharged into the delta through the Sacramento River. That pumping and diversion of water south, plus the same design and proposal to pump the water that came into the delta from the Oroville Dam, the Feather River Project, and sending it south through the state project canal along the west side of the valley, was a threat which the people in the delta could not tolerate. Clear down as far as those highly industrialized towns of Pittsburg and Antioch that are on the river and on Suisun Bay and actually into Carquinez Straits area, they could not tolerate diversions without being sure that their requirements for water for both industries and for highly developed agriculture in the delta area would be provided. They were afraid, number one, that with these substantial diversions from the delta, the general level of water in the delta would be lowered to such an extent that agriculture, which now siphons the water out of the delta onto their fields, would have to pump it and add the cost of power to the cost of production of their crops. The industries had the same fear that they would have to lift the water further than they have to lift it at the present time as the delta was lowered.

There was that, plus the fact that, if the level of the delta was lowered and the flow out of the delta into San Francisco Bay of good, clear, fresh water was reduced,

there would be further salt water intrusion up through Carquinez Straits and into the delta itself. There has been substantial sea-water intrusion in the lowest regions of the delta around Carquinez Straits, so that no longer is there fresh water at Crockett, where the big sugar mill is which the Spreckels people put in years ago. It used to pump water out of the delta for their use and now they have to pipe it in from further upstream. So they have a serious problem and they are entitled to be assured of protection inasmuch as that economy has been developed on the basis of conditions as they are at the delta, and, to that extent, the delta is an area of origin which is entitled to protection under the laws which control the construction and operation of the big state project.

But those people have been unreasonable in a way, from the viewpoint of others. For instance, the construction of the Shasta Dam, controlling the flood-flows from the Sacramento River, has been a very valuable thing to the delta in that it's greatly reduced the chances of the flooding of the delta, which has taken place in the past with a great deal of damage. The delta lands are very peculiar. They are mostly peat soils. They compact when water is used on them and, by reason of compaction, they lower the land level. Most of the land in the delta is below sea level, and these huge delta islands, so-called, are surrounded, completely circumscribed, by dikes as high

as twenty-five feet. The land lays below the level of the water. As a matter of fact, it's startling sometimes if you're out in the middle of one of these islands, which may run three or four thousand acres and is a highly cultivated area, and you look over towards one of the branches of the river that goes through there, and you see a freighter going up to Stockton, twenty feet up in the air.

But it's the same situation, of course, that exists below sea level in Holland. The soil is very rich. It has two problems. This subsidence is one, and it keeps the levels of soil going down and down all the time. The other thing is that when it dries out it has a tendency to blow away. And then, because it's mostly peat and peat moss, if a fire starts in it, the soil burns. And it's very difficult to get a fire out, out in this area. You have to flood the whole field. Now in the past, some of those large islands of several thousand acres have been lost when the delta levees have broken or have been topped by these huge storms, water flows that used to come down to Sacramento. Those islands have been lost and there's a number of those islands now that have been lost for good. You can't drain them, and they're under twenty or thirty feet of water. The soil is highly productive. It's, in fact, the thing you would buy to improve your own soil at home if you wanted to raise some exotic plants. And the

type of produce that they grow in there are such things as asparagus and those expensive, high-cost and high-priced products.

So, the preservation of the delta agricultural economy is a must. And those people are rightfully very concerned about anything that would change the physical factors of the delta. However, the construction of the Shasta Reservoir provided them with water at times when the rivers used to be nearly dry and they had months of drought and protected them against the serious flood problems that they used to have when the river was completely uncontrolled. And yet, they have consistently refused to acknowledge that they have any responsibility to pay for the benefits which they've received through the Central Valley Project. And since the completion of Shasta in about '43 or '44 along there, there's been a running battle between the people of the delta and the Reclamation Bureau as to the responsibility of these people in the delta to pay for the benefits which they received from the construction of Shasta.

Now the same thing is going to be true when the state project has been built, particularly if it follows the original planning which was to merely bring the water into the delta and then pump it out. Now to avoid the problem, both the Reclamation Bureau and the state have been considering what is called the "peripheral canal," which would be a canal that would take this conserved water from Shasta

and also from Oroville out of the Sacramento River upstream from the delta. It would run it around the delta through a canal and series of siphons, clear around the delta, and discharge it below the delta into the two big projects--the Delta-Mendota, operated by the Reclamation Bureau, and the big state aqueduct which would be constructed as a part of the state project.

This would have a number of benefits. In the first place, the good-quality water from the Sacramento River would never get involved in the delta at all and there is considerable pollution from return flows and that sort of thing in the delta. So, we'd get a better quality of water by bypassing the pool and carrying it around. We'd also avoid this big row with the delta people, who, of course, would have the right to use that water in transit and feel that they shouldn't be, in any way, responsible for the cost of making it available to them. It would just be water in the delta as far as they're concerned.

This would also permit a better control of the delta and should have advantages to the people in the delta itself for the reason that, as this peripheral canal circles the delta, it crosses every one of the streams, and sloughs and rivers that feed the delta. Outlets could be constructed in the canal and a controlled delivery be made into these streams feeding the delta so that you could get a permanently established water level in the delta and avoid this change of water level. You could also release this water in such

a way as to establish a standard of water quality within the delta that would both repel the salt water from intrusion and overcome, to the extent necessary, the return flows that now have polluted the delta.

In connection with this, there would have to be a drain constructed practically the length of the San Joaquin Valley. And, both the State Water Project and the Central Valley Project, which now includes the portion of the use of the state's canal and the partnership with the San Luis Dam and Reservoir in Fresno County, require that there be a drain constructed before the water from each of these projects can be put on the land in the San Joaquin Valley. That is to be done so that the bad-quality return flows which will come out of those lands when they are irrigated will not be discharged into the delta. It's proposed that this drainage canal be constructed in the old bed of the old San Joaquin River and that the fields irrigated by the new water supply be drained into this drain and that the drain follow the gravity flow in the bed of the river down to the delta. Then it could be picked up and probably pumped in huge conduit pipeline or canal, someplace out past the delta and into San Francisco Bay.

Now, the people in San Francisco Bay say, "Take it clear through the Golden Gate. Take it out by the Farallones. Get it out of our hair."

The people in the delta say, "We don't care where you

stop as long as you get it past the delta."

The Reclamation Bureau and the State Department of Water Resources, who have to build this project, and the water consumers in the San Joaquin Valley and southern California, who have to pay for it, say, "Stop it at the closest point in the delta that it can be terminated without serious harm to the people of the delta."

And we think that it could be stopped at approximately the Antioch Bridge and dumped into the bay at Suisun or in the Carquinez Straits, where the water is practically bay water at the present time.

But this is a battle, and there has been a bill introduced on behalf of the San Francisco Bay people in Congress, to stop the expenditure of any money by the federal government in the construction of such a drain unless its terminus is satisfactory to the people of the delta and the people of the Bay. And there is similar legislation pending in the California State Legislature to prevent the construction of this drain until its terminal has been established at a point which is satisfactory to the people of the delta and the Bay. This will be a big battle and the other side of the battle is that no water can be used under the legislation that authorizes the construction of the projects until a drain has been built.

So the bureau and the state each finds itself between the delta and the deep blue sea. Both of them have starting

dates under which they propose to deliver water to their contract owners, but in the San Joaquin Valley that water so delivered can't be put on the ground until the drain is constructed and the drain can't be constructed until everybody in the San Francisco Bay and delta areas are satisfied that the end of the drain will not be so located that it does either the Bay or the delta any harm. When this matter will be decided, none of us know. But there is a great deal of attention being given it, and it has the beneficial effect of bringing to the attention of the people who surround San Francisco Bay the fact that even without these drains the Bay is seriously polluted and something must be done, either through higher class treatment of sewage or carrying the sewage away from the area and from the outlets of the various cities. Maybe it's necessary to run the drain clear out to the Farallones but certainly it should not be all chargeable to the water consumers from the state and Central Valley Projects. It's just one of the things that we've got to battle along with and see what comes.

Now, one other problem still remains in connection with both the Federal Central Valley Project and the state's California Aqueduct Project. The Central Valley water comes from the conserved water at Shasta and from Folsom Dam on the American River. The state's water comes from the conserved water of the Feather River at the Oroville Dam.

Those two sources of the water to be used in the big Central Valley and the state diversion projects are not enough to meet the ultimate demands. As a matter of fact, we can foresee, presently, that within twenty years, additional water will be needed for both projects. The federal government is proceeding to get an authorization higher up on the American River, the Auburn Dam, and that has just been authorized currently in the Legislature, although the money has not been appropriated for its construction. That will help the Federal Central Valley Project.

The state and the federal government, as well, are rivals in the development of the water in the northwestern coastal counties of California which have been the subject to floods every few years. During the last one in December of '64, lives were lost and millions of dollars' damage were done and the whole country up there was devastated by these flood-flows on the Eel, the Trinity, the Mad, and the Klamath and all those northern California streams. The people up there, for a long time prior to the December floods, were quite critical of the plans of both the federal government and the state water projects to go into their area and divert water from that area into the Central Valley for transportation down to the service areas of both the state and federal projects, including our area here in southern California. They wanted a lot of things done for them in exchange for taking the water--the old

problem of the areas of origin against the areas of deficiency and what the areas of deficiency would be willing or could afford to pay for the privilege of taking the water away from the areas of origin.

This battle or at least "disagreement and problems" between us was very prevalent right up to the time of the December floods, and then, suddenly, there was a great reversal. California, amongst all the other sources it was looking towards for possible ultimate development, is, of course, considering a project that would bring water into the whole Pacific Southwest area from the Columbia River. During and after the floods on the Eel and the areas in the northwest counties, the citizens up there rose in considerable wrath and criticism that the State of California would think of going anyplace else except up there to get the water because here was the water flooding the whole area, and the area was not able to finance and support the cost of flood control projects on their rivers, and here was the rest of California looking to other areas for the source of import water. Suddenly, that became a thing of great seriousness to those people up there, and through their agencies and their county governments and all of the organizations that used to oppose any diversion of that water, they are now insisting that California, and the federal government as well, look to that area as its next source of water. And this may be the logical source

of water and it is being given a very serious look, but no decision has yet been made as of this time on it.

CHAPTER VII

HISTORICAL REVIEW OF THE SHIFT IN CONTROL OVER CALIFORNIA WATER RESOURCES

California got quite an early start in local water development chiefly because of the mining activities in the middle of the nineteenth century. The miners depended upon water because, in the first place, the gold was generally along stream beds. It was placer-type gold that had been washed out of the hills and was found in the gravel alongside of streams, mostly as free gold. And the miners used water to wash the gravel from the gold and they had rockers and sluice boxes and that sort of thing and they used quite a bit of water from local streams in sluicing the earth away from the gold. And so, the use of water became a very early issue in California economy and in governmental development.

The miners at first just moved in on streams and took water that they needed without following any procedures of acquiring water rights or anything of that sort. And, of course, in real early days, it didn't make a great deal of difference because there was little irrigated agriculture or little dependence upon water in the industrial or municipal sense. There were no large cities, and there was little, if any, industrial development. And most of

the farm activity was cattle raising on a dry-farming basis. So the miners had no great problem in just going in and taking such water as they needed for their development, except between themselves. And there were some pretty bloody pitched battles over water supplies by the miners and by the mining communities.

What the law would be on acquiring water rights was just unknown. California had been very recently acquired from Mexico and there was no particular Mexican law on water except the old pueblo rights which was a part of the grant from the king of Spain. This continued down through the Mexican rule of California and just basically provided that a little town got a charter from the king of Spain as a pueblo and acquired with that charter the use of the water from any streams that they were located on to the extent of whatever needs they had. So with the admission of California as a state in the Union, the question of what water law would prevail was just unknown. The miners had established this procedure of just taking what water they wanted. And with the development that began right after the United States took over the State of California, people began to settle on streams and irrigate a little and build towns and that sort of thing, and so pretty soon there was quite a controversy being waged as to who owned the water resources.

So the first legal approach to it was that the old

common law prevailed which we had inherited from our English background. That was the law of riparian rights. The riparian rights approach was that anyone who owned land that bordered a stream had the right to use as much of the water in the stream for domestic purposes or irrigation or whatever use they wished to make of the water. They could use as much as was necessary for that purpose--the reasonable, beneficial use of water from the stream to the riparian land.

Now, most of the mining lands were lands that were in the public domain. They were owned by the federal government and until they were taken up under federal land settlement rights and patented, in proprietors, the water was a wild thing that belonged to no one, and it was used by people who had some purpose for it other than the irrigating of these riparian lands. So while California adopted the common-law rule of riparian lands, as far as land ownership was concerned, and the use of water upon the particular land of the particular owner that bordered the stream, there was also this other use by people who took water from the stream and might carry it across the Divide into another watershed or carry it away from the site of their acquisition where they took it from the stream and used it for what was basically an industrial use--the panning and washing of gold.

Then as gold mining became something other than an individual effort of one man, a burro and a gold pan, a

cradle or a sluice box, the development began to be taken over by big operators that began placer-mining and placer-mining was a huge water consumer. It was done by damming up a stream and then pumping the water in with high pressure against a hillside or a mountain where gold was expected to be to wash all of this mud down to the stream and pan it out. And the streams were becoming filled with debris. I think there was an estimate that the Sacramento River depth had been decreased by some thirty feet in its whole length by reason of all this mud and debris being washed down by this placer-mining operation.

Then, the next step in gold mining was to go up these old stream beds with dredges and dredge the gold out of the stream. That merely meant that they created a water pool in the stream and these huge dredges sucked the soil from all the area that they could reach around this pond where the dredge lay. They took the gold out of the soil through sluice boxes and the dredge dumped the rock and the gravel back in the stream. So we have, in some portions of the state, acres and acres of these old dredge tailings which just ruin the land. They had been converted from meadows and fields and good farming land alongside of the stream to just piles and piles of heavy rock and boulders and gravel. So there was a need for regulation.

The state's answer to that was that for mining the law of appropriation would be substituted as a means of

acquiring a water right. But you could only get a right to appropriate water by filing a notice on the place where you proposed to appropriate the water, reciting the purpose of the appropriation and the place where you were going to use this water and make a record of it. Then the law said that the appropriator first in time acquired a prior right to subsequent appropriators. So that if there were more appropriations on a stream than the stream would supply, plus its riparian uses by irrigators, you began to chop off the appropriators through court orders beginning with the last one that was filed and chopping backward in inverse order until you reduced the appropriations to the amount which could be supplied from the water of the stream.

Now, that appropriation right which was acquired was a lesser right than the riparian right. But, if the apprp-priator used the right long enough to the injury of a riparian owner, he might ultimately acquire a right by prescription. As against the riparian owner, that was a primary right and the more important right and the stronger right than the right of the riparian. So we had this problem of the irrigators against the miners, and the miners against the settlers, and the miners against each other. Basically, they were not governed by any particular written law, but by court decisions as to who had the prior right and who could stop someone from the diversion of water.

Now, this meant litigation on the streams and for

years, up and down the State of California, we had long involved lawsuits that were bitterly fought as to who had the rights to the waters of a particular stream. These lawsuits were quite expensive and the agriculturalist, particularly, had difficulty in financing the suits that were necessary to protect his rights as against the industrial appropriator and the mining appropriator--mining, being of course, an industry. So the battle was one which the appropriator with his industrial use of water could best afford and, therefore, was most likely to win the lawsuits that were necessary to establish the water rights.

This problem of the irrigator finally resulted in the formation of districts of various kinds; the earliest and still probably the most important in the state, were the irrigation districts. These districts were formed by a group of property owners in a particular area that could be supplied with water from a particular source, generally lands that were riparian to a stream, although the districts might annex territory that was not riparian and appropriate water for agricultural use in the area of the district.

There was a general law passed by the State Legislature (the original act was called the Wright Act) in the 1870's or thereabouts [1887]. It provided the mechanics by which an irrigation district could be formed with the power to levy assessments on the land as a part of its needed revenues and with the right to appropriate water, distribute

it to the landowners within its boundaries, charge for the water service and be in a position to protect those rights as against the industrial appropriators.

These districts were formed and rapidly expanded all over the State of California. There were a number down here in San Diego County that went broke mainly because they either over-bonded themselves (they expected to be able to sell a lot of the lands and recoup with all they paid in bond-service charges) or more seriously because there wasn't the quantity of water available that they needed to irrigate the lands that they included in their boundaries. So the districts spread all over the state and became a problem to some extent in that they enticed investors to buy their bonds and then defaulted on their bonds and California got into pretty bad repute and the irrigation district movement fell into bad repute throughout the country.

But, nevertheless, this irrigation-district tool for the acquisition of water rights and the distribution of that water to a large number of land owners for irrigation and domestic uses was a good tool and it accomplished a great deal. Still today, with the exception of the big metropolitan city areas, most of the water of this state is distributed and delivered to consumers through irrigation districts. The people became quite proud of these agencies. The ones that survived the first onslaught of bad financing became quite powerful organizations and very

well thought of and the people within their boundaries became quite loyal to them.

And this was the development of local waters by local people at local expense and it was something to be very proud of. Of course, they took the water that was easiest to develop and the cheapest to develop and distributed it in a fairly small local area so that it was something quite easily financed if it was a plentiful water supply and there were good lands to irrigate. So it was well within the means of the local people to develop the water supplies of this state in this way. This went on and was really the major method of developing water for many years.

In the '20's, the state itself became interested (the state as a governmental agency) in water development due to the fact that there was this imbalance of source and need in the Great Central Valley of the state. Most of the water was produced in the Sacramento River section, the northern section of the Central Valley, while the most productive land and the biggest area of land that could be irrigated with that water was in the San Joaquin end of the valley which was longer and the broader end of the Central Valley.

So, the state began to consider a method by which water could be moved from the Sacramento Valley down into the San Joaquin Valley. Districts had considered this and there had been some rather abortive efforts by districts

in the San Joaquin Valley to unite and, on some sort of a joint-venture basis, negotiate some means with similar districts in the northern part of the state by which the same thing could be accomplished. But the effort never resulted in anything, chiefly because of the inability of the districts to agree and because, basically, there was no police power within the districts to compel the result against any area that was recalcitrant about participating in it.

So the State Central Valley Project was born, at least in the planning end of the thing. The State Central Valley Project Act was adopted and the State Engineer was given the authority to try to put the deal together under the law, and a commission called the State Water Resources Board was formed which consisted of the people from various sections of the state who had charge of this whole project and the authority to put the plans that the State Engineer might come up with into effect. The only trouble was that, by the time this thing was pretty well put together on paper, the Depression of the 1930's happened and the state found itself unable to finance this quite extensive development. It was expected it might run half a billion dollars or something of that sort to actually build the works. And the state found itself unable to sell the bonds or to raise the finances to construct this thing and appealed to the federal government during the Depression.

The federal government was quite anxious to find projects which would provide employment and the use and purchase of materials and help get the economy back on the road and accomplish something. And this was a project right down the alley of the federal government at that time. So the federal government, through the Department of Interior, and particularly the Reclamation Bureau, decided that they would come in and take over this State Central Valley Project.

Now, I mentioned the Reclamation Bureau. The Reclamation Bureau was an outgrowth of the quite early-day boom of western land settlement. The Reclamation Bureau was authorized as a bureau in the Department of Interior to construct land reclamation projects in the area of the west, the area of the United States basically west of the hundredth meridian. And that encompassed the so-called seventeen western states from the Canadian border to the Mexican border and from the Rocky Mountains to the Pacific Coast.

Many people, particularly in California, were concerned about the federal government coming into this water picture. There had been no federal developments in California to amount to anything. It was looked upon as an octopus that might come in and take away the rights of the irrigation districts and the farmers and upset local economy by federal dominance of the water supplies of the state. A sort of an example of it is what happened on the

Colorado River.

The Colorado River, being an interstate stream, could not very well be developed by any one state on its own. And, before the federal government would step into it, they required that a contract be entered into amongst the seven states that bordered it or through whose area the Colorado River ran. And having accomplished that contract, then the federal government was willing to appropriate the money to develop the works that were necessary on the river, the first of which was the dam which has been called Boulder or Hoover Dam, the dam which impounds Lake Mead on the Colorado in the Valley. The government, before it would spend the money for the construction of that huge and quite expensive dam, wanted the assurance that the cost would be repaid. This would be the use of the federal treasury for somewhat local use and, before the federal government would proceed with the construction, they required that contracts be entered into for the purchase of the power that the dam would develop, electric power, in an amount equal to the cost of the construction of the dam. The Department of Water and Power of the City of Los Angeles, the Metropolitan Water District which was formed for the purpose of bringing the water that the dam would develop into the California South Coastal Plain, and the Southern California Edison Company each agreed to purchase one third, each of them, of all the power generated

at Boulder Dam, and by the purchase of that power, underwrite the cost of construction of Boulder Dam. And that is the way the financing was accomplished. The federal government took from its treasury the cost of the dam and entered into power contracts with each of those three agencies for all of the power that could be developed at the dam at a price that would repay the federal government, over a forty-year basis, the cost of construction.

With this sort of an arrangement, southern California, where the power would all be sold, took the position that this construction was entirely financed by southern California and that, therefore, southern California should get all of the benefits possible out of the product that the project would produce which was considered to be mainly the water that would be impounded back of it. Southern California has boastfully stated any number of times that its water supplies have never been subsidized in any way by the federal government. Both the Imperial Valley's All-American Canal Project and the Metropolitan's Southern California Colorado River Aqueduct Project and Boulder Dam itself have been financed through the sale of power to basically southern California distributors.

The other side of that coin is that it was sold to them at bargain rates and, while there was some gamble in it originally because the market wasn't there when they signed up for the contracts, they had enough foresight to

sign the contracts without a current market for the power. But the growth of southern California, since the obligation was entered into, has been so enormous that this has been a power-short area. And this power has been resold at substantial profits to the original underwriters, which, of course, in my opinion, they're entitled to, but nevertheless, the picture isn't quite as clear as some of us would like to present--that we are free from any federal subsidy in southern California on the Colorado River.

In the Central Valley, the same little matter of local pride and, basically, local fear of the so-called federal bureaucrats held up, for quite a while, the actual development by the federal government of the Federal Central Valley Project. However, by the early 1940's, just after the end of the war, the big Shasta Dam had been built on the upper reaches of Sacramento River, which provided a control of the big flood-flows up there, to an extent that would permit the release of water on a uniform basis, substantially in excess of the needs of the people dependent upon the Sacramento River for their water supply. So it created a surplus by the conservation of those flood-flows which the federal government was then able to deliver into the south San Joaquin area and amplify or increase the amount of water available in the San Joaquin Valley. And it's worked out very well.

But there has been a running, continuous battle between

the irrigation districts on the one hand and the Reclamation Bureau on the other as to who is the boss of this situation. The Reclamation Act, which was adopted way back in 1902 in the Theodore Roosevelt administration, contained two provisions that have been the source of a great deal of irritation and litigation and enmity between the local water consumers and the federal government. The first was a provision that none of the water developed from a reclamation project could be used by any one landowner who owned in excess of one hundred sixty acres of land. If an individual landowner in a reclamation project owned more than a hundred and sixty acres, he could either sell off the excess land over the hundred and sixty acres or he could take water on a hundred and sixty acres and not use it on the rest of his land. Or, under certain arrangements with the Secretary of Interior, he could take it for his excess land but agree to a price at which he would sell that land to anyone that came along and offered to purchase it. The price was generally below the market. It could not be sold as land with a water right. It was sold as dry land, at a dry-land price and at a dry-land value. But as soon as it was purchased by another individual, it became eligible then to get water from the project.

So this situation was intended for reclamation projects, true reclamation projects, that is, a project built by the federal government to water federal land that was open for

settlement, to prevent big landowners from coming in or wealthy people from coming in and taking the cream of this thing by taking huge areas of land and then reselling them at substantial profits. And as long as these projects were true reclamation projects, that is, projects that were entirely developed by the federal government and the water supply made available to land which was then settled by homesteaders, it was a good thing. In fact, it was essential in order to sell the whole reclamation project to the eastern states whose financing went into this thing. It had to be indicated that this was a program of national benefit and the way it was presented as being of national benefit was through this hundred and sixty acre limitation which made a great deal of land open for settlement by the people from the East.

So this hundred and sixty acre limitation was in the Act originally, and it's remained in the Act all these years. And it's still the source of a great many problems, because no longer is the Reclamation Act used as it was originally intended as a basis for developing federal land or settlement by homesteaders. It's used now to provide supplemental water to areas that have long since been privately owned and privately developed and watered through these irrigation districts who no longer have as much water as they need.

So the Central Valley Project placed the problem squarely before the people. You could have this supplemental

water, which was badly needed, but you became immediately subject to the hundred and sixty acre limitation. And these land ownings in the San Joaquin Valley were huge and ownings that hold several hundreds of acres, sometimes thousands of acres of land. The other provision in the Act, which has created a lot of turmoil, was the famous Section Eight, which provided that the Secretary of Interior, in acquiring water rights for a project, a federal project, must follow the provisions of state law in acquiring such a water right.

So the position that these irrigation districts up and down the state took was, "All right, we need the Sacramento water and we welcome you, the Reclamation Bureau of the federal government, into state water development so that you will finance the works that are necessary to provide us with this supplemental water that we so badly need. But you haven't any water right. You can build the facility, but you must acquire the water for it from the State of California, which is the owner of all the water that's unappropriated in the state."

Now, how the state became the owner of that water was to pass a constitutional amendment that said the waters in this state belong to the State of California. Period.

So the federal government was told, "You don't have any water, but you've got a lot of money. We welcome your money, but in spending your money, you have to acquire this

water right and you've got to acquire it from the state through the state procedures." In other words, "You, the federal government, must appropriate this water and be like any other appropriator and you must do it through agreeing to abide by all state laws respecting the acquisition of that water and its use."

The federals sort of made a token compliance with this law; they would apply for a water right, but they didn't wait until they got it. They went ahead and built their facilities and they went ahead and started distributing it around and entering into contracts with these irrigation districts. But in their contracts, they had the hundred and sixty acre limitations provision.

And they told the irrigation districts, "You can have this supplemental water and you get it at cost of development, interest free," that is, the federal subsidy on federal project water available only to agriculture. And all the irrigation districts were basically agricultural agencies. "But when you take this water, you must sign a contract with us that you will police it and that it will not be used on areas in excess of a hundred and sixty acres owned by one individual."

Now, that basically meant in California, because we have the community property law, that a husband and wife could own two one hundred and sixty acre parcels and if you had some adult children, you could give them a hundred

and sixty. So, by one way or another, these big holdings were pretty well held together.

But that created a conflict in the laws as far as irrigation districts were concerned. They are state agencies formed under a general act, as I've said, and the law under which they are formed provides that any property owner within an irrigation district, without restriction as to area or anything else, has the right to that proportion of the water that the irrigation district has for distribution, that the annual assessment upon his land bears to the total in the annual assessments on the lands of all the other people within the district. Without restriction.

So some of these property owners said, "Now, well, wait a minute. You, the irrigation district from which we acquire this water, of course, contracted with the federal government to take water from this project. But the minute you get that water, it becomes a part of your total water supply. And you, the irrigation district, and I, the landowner within the irrigation district, are bound by the state law which says that, regardless of my ownership, I have that proportion of any water that you get, which my assessment bears to the total assessment and I don't have to limit my use of water. I don't have to sell off my excess acreage and I'm not going to pay any attention to this federal law which has nothing at all to do with me. I'm not a contractor with the government."

So we had the famous suit in California called the Ivanhoe Suit, Ivanhoe vs McCracken. The Ivanhoe Suit was a suit in which a property owner named McCracken, who owned several hundred acres, opposed the Ivanhoe Irrigation District, which was a federal contractor on the Central Valley Project. Of course, the Irrigation District as such was the named opponent in the action, but a very friendly opponent as far as the property owner was concerned. The Irrigation District hoped the property owner would win the case and the property owner did win the case in California courts. And it went up to the Supreme Court in the State of California and the Supreme Court ruled that the federal government didn't have any water right; that they merely had a facility that could distribute water, but the water that they distributed belonged to the people of the State of California and, therefore, was subject to the laws of the State of California and not the laws of the federal government.

The case was appealed by the State of California, which in the meantime had interested itself in this case, and, at the urging of the Reclamation Bureau, the State of California appealed this decision on the basis that this law ought to be very well established and if this is the law, we'd better know it. Because the attitude of the Department of Interior and the federal government was, "If this is the law, you're not going to get any more federal

projects in California. We won't build any more of these projects if we have no control over them. We are bound by the reclamation law and the reclamation law says we can't distribute this water if it's going to be used upon excess of a hundred and sixty acres of land."

So it went up to the Supreme Court and the California districts and Mr. McCracken's briefs were joined in by practically all the districts in the state. The Irrigation District Association filed an Amicus Curiae brief and all of us did some work on this thing, trying to protect ourselves against this foreign agency, the United States of America, that was coming in on our own private preserves. We went to Supreme Court on the basis that the water belonged to the state; that the reclamation law required compliance with state laws in its acquisition, and the state law was in conflict with the hundred and sixty acre limitation and, therefore, the hundred and sixty acre limitation could not be applied under these circumstances in California.

The Supreme Court made short shrift of our water-rights decision. They said it was not a water-rights case. They said that it was a case involving the right of the federal government to construct a project and the right of the federal government, in the construction of that project, to adopt rules and regulations that would govern the use of water from that project. The rule and regulation was

that this water could not be used on areas of land in excess of a hundred and sixty acres in one ownership. Period. The people could take the water or they didn't have to take the water, but if they took water from a federal project, they had to take it subject to the terms and conditions which Congress had seen fit to impose upon federal projects and the use of water from such projects. The water-right thing was just ignored and swept under the rug and so we don't know today any more about the water right than we knew before the case, except that the water right disappears when the water is gathered into a federal project and distributed by that project.

Now this big struggle was going on between the federal government and these reclamation districts in aggregate, and was resolved in a way that was not very well received by the local irrigation districts and not too well received by the State of California, although the state itself was quite interested that there remain federal project development in the state. The state, by this time (this decision came down in the early '50's, but even at that time and before the state water project was authorized and in existence), could see that the development of water by these local districts was no longer an economic and practical way to supply the water needs throughout the whole state of California. Federal projects were necessary and state projects were necessary, mainly because the federal projects

were built through annual appropriations by the Congress and the Congress had so many other places to use the money that you couldn't get it fast enough to build all of the federal projects that were needed.

So there was a place between the development by irrigation districts and cities and local agencies for their own water supplies, but mainly for irrigation, agriculture, and the development by the federal government on the basis of annual appropriations. There was this space in between where it was necessary for some other agency with an overall financing ability which could develop waters for delivery to both agricultural users and industrial and domestic users throughout the state if the state was to continue to grow as it had been. So the State Water Project was born.

Now the State Water Project was just as dangerous and inimical to the rights of these local agencies as was the federal project. And, again, the hue and cry arose that the local agencies were going to have their water rights invaded and they were going to be in competition with the state. They had already been invaded by the federal government and now the state government was going to take them over and, when the state got into the picture, well, that would mean that the big cities would get all the water and the poor farmers were going to be dried up.

So this battle, which was originally two-cornered, now

has three corners--the federal government, the state government, and the local agencies. It has been boiling away for all these years and it has brought into focus this problem of who does own this water? What agency, if any, has the right? The State of California has contended, by reason of its own self-help, included in its constitution, that it is the owner of the water. The Department of Justice says that that is only true to the extent that this water is not encumbered by some federal requirement, for instance, the so-called Navigation Servitude.

The constitution gave to the federal government the control of commerce between the states and to effect that control, the Supreme Court, back in the days of the famous decisions of Chief Justice Marshall, has held that that means that navigable waters are under the control of the federal government in order that commerce can be carried on between and amongst the states. Now navigable waters, it's been jokingly said, is any stream that can float a Supreme Court decision. But, actually, it's nearly that bad because a rowboat can be a means of carrying commerce, even a canoe, and nearly any river is, to that extent, navigable. Now that doesn't mean that the federal government is going to control every little brook or stream or creek in the West, but it does mean that when you get into the major water supplies of the state, they are subject to federal control under the Navigation Servitude. The

Department of Justice says this is something that the federal government cannot bargain away and we cannot subordinate the federal government to local control either by an irrigation district or even by a state. The federal government, in those things, is supreme. It is the sovereign and it must be supreme and it can't be regulated to the extent that the interests of the federal government and, in fact, its responsibilities are in any way endangered by local regulation. So the navigable streams are out.

Now, under the federal responsibility and authority and power to protect the nation against foreign invasion and whatnot, we have the problem of military installations. And in San Diego, we had a real tough, knockdown, dragout case between the Fallbrook Public Utility District, which is an irrigation-type district, and the federal government through the U.S. Navy on the Santa Margarita River. The federal government bought a large area of land and built a great big Marine complex called Camp Pendleton at the mouth of this river and the river was its only source of supply.

So the federal government took the position that, "We have to control any development on this river that waters our lands and our huge military base as against upstream appropriators and the Public Utility District who proposes to build a dam and dam up this river upstream from us and take the water and irrigate a bunch of avocado trees, just

can't do it."

That lawsuit has been in the courts for a long time, and while it appears that to some extent the right of the government to prevent any upstream development has been curtailed, the actual final definitive judgment has never been entered in the suit. It's assumed that the lower federal court's decision will stand and that Pendleton will be entitled to have the same use of the water of that river as though it were a private landowner and not a federal landowner, which means that it will have all the riparian uses that it can justify but that it cannot control the upstream takers except to the extent that they interfere with the riparian right of that land. But this argument, between the state, the districts, and the federal government as to who owns the water rights, continues.

There's one other contention on the part of the federal government, too. That is, if the water in any stream arises upon federal lands, if that's the area of its origin, that water in the area in which it arises belongs to the federal government as the owner of the federal lands and downstream owners can never acquire any right to that water as against the federal government who owns the upstream sources of the water. And those lands are not lands that are open to settlement. They've been withdrawn from public settlement and they're held by the United States as federal lands for federal parks or forestry or whatever purposes

the federal government wants to make use of them for. And the Department of Justice's contention is that the water belongs to those lands and it can be withheld and controlled and the federal government is not subject to any state regulation. In regard to the use of water on those federal lands, if they take it all, they're entitled to take it all.

So we've got those issues which have never been resolved. There have been a number of attempts, and bitterly fought attempts, to resolve them through federal legislation. And from the middle '50's, when this problem first became acute, to the current session of Congress, there's been a state water rights bill before Congress every session. The first one was introduced by Senator Barrett of Wyoming, it was called the Barrett Bill, and all the other bills are imitations of the Barrett Bill. They seek to make firm this contention of the western states that the states own the water and the federal government is invited to come in and spend money to develop it, but it can't control it, which is, of course, something that the federal departments just can't be permitted to say. So far the bill has never passed Congress. The first one was very clear cut. It just said the states were the owners of the water--period. If the federal government develops it, it is still subject to state law. Each bill as it comes in is a little weaker and a little weaker and a little more wishy-washy. The one that's now pending before Congress merely says that

Congress should declare what the federal government's rights are and what it proposes to do with this water and, "We concede that you probably own it all and can do anything you want to with it, but you ought to tell us so we'll know what there is left for us to try to develop on our own." It will probably get no place either.

Actually there should be no particular problem. We seem to forget that the federal government is our government just as much as the government of an irrigation district is our government; it's just a little smaller microcosm in the overall picture. The state government is also our government. The projects that the federal government builds can't be taken away. Once they're developed, here is this facility. It's just the irksome little situation of who is the boss, whose rule is going to govern this thing.

The hundred and sixty acre limitation, I imagine, ultimately will be resolved by something that looks to the efficacy of what they're trying to accomplish with a hundred and sixty acre limitation and applies it on the basis of accomplishing its purpose, which is to prevent huge corporate owners coming in and taking all the lands and preventing its use by the small farmer. But, in many areas of the state, including the Central Valley, a hundred and sixty acre farm is not an economic-sized farm. You can't operate. The type of crops that are grown in those areas are not high-priced crops. They require mass production. They

are such things as cotton and carrots and that sort of thing. Mass production is the only way to do it and the small farmers revoke certain things to do it. What they do is all get together and get a manager and operate their holdings as individually-owned big farms. And that seems to be the only way it can be done.

An example of that was the very recent attempt on the part of the Department of Interior to sell the big Di Giorgio farm in Fresno County, some four thousand acres of lands that were excess to the land entitled to the water supply. The federal government went in and broke it up into small units and offered them for sale. They had somewhat in excess of a thousand units of lands and they broke them up in ranches from ten acres to a hundred and sixty. Of all the units that they offered for sale, there was a bid on only one of them. They made one sale. So, it's just not economic to develop lands in this state on a hundred and sixty acre limitation except in those areas where you raise small acreages of high-priced crops such as strawberries or avocados, something of that sort. I imagine that one of these days Congress will take a long, hard look and make it possible for the Department of Interior to adjust the acreage limitation to the particular circumstances of the particular area that they're dealing with rather than continuing this wholesale requirement that all farms shall be a hundred and sixty acres or less.

CHAPTER VIII

REGIONAL WATER PLANS AND THE CHANGING PHILOSOPHY OF WATER RIGHTS

Recently the discussion of overall water development has brought to the forefront this idea of regional plans. Actually regional planning is nothing new. Probably the most outstanding example of a regional project, regionally planned, which crossed state borders and so forth, was the Tennessee Valley Project, where the whole basin of the Tennessee River, from Alabama clear to the junction with the Ohio, was developed as an overall project with the power plants along the river each helping to finance the overall development. So the region was considered as a region rather than as a series of local projects.

Another example was the development on the Missouri River, which was a little different approach. It was a combined project of the Army Corps of Engineers and the Reclamation Bureau, but it was the same basic format in that it looked to the problem of flood control and water conservation and controls of the entire Missouri basin and paid no particular attention to state lines and state projects or local individual projects.

The Tennessee Valley Project, of course, was not either a Bureau project nor an Army Corps project, although

both of them were involved in some of the construction. But it was a departure from prior water project developments in that it was an organization in its own right. The Tennessee Valley Authority was formed as a sort of a governmental corporation, and the development was carried along through that organization rather than by either the Corps or the Reclamation Bureau.

Of course, we've had one such development on the Pacific coast too. The development of the big Columbia River complex, where it was mostly for power, but a great deal of conserved water has been made available through that type of a project. And, finally, in California, the Central Valley Project is really a regional project, although it's entirely an intrastate project and does not cross the boundaries of California any place.

The approach to the Colorado River development was a regional project. I first heard about it, oh, in 1960, on the California Water Commission of which I've been a member since 1958. The chairman of the commission was James K. Carr from Redding, California, who, after the election of President Kennedy, was made a part of his junior cabinet by being appointed Assistant Secretary of Interior, Stewart Udall being the Secretary. So here was Udall, an Arizona man, and Carr, a Californian. And they both knew what was going to happen early in the Kennedy administration and that was termination and completion of

the California-Arizona suit. They knew however that came out, that certainly there would be a clamor again for the construction of the Central Arizona Project. Udall was naturally anxious that he would be able to assist in the development of that project to the extent necessary, and it had always been fought by California as a project for which there was neither water, nor a project which was financially feasible.

So Udall and Jim Carr got together to see if there wasn't something that they could work up that would make the Central Arizona Project acceptable to California and, of course, a practical thing for Arizona to do. And they hit upon this idea of pooling all of the revenues that could be developed from the Colorado River. The power contracts at Boulder and at Parker, both substantial producers of power on the river and supplemented by Davis Dam, are nearly paid off. In a few more years those power revenues will be released for some purpose other than the mere repayment of the costs of the Boulder Canyon Project.

And the proposal that they made was, "Let's take those power revenues, when they're no longer needed for the repayment of the cost of the Boulder Project, and then devote those power revenues to a pooled concept of all the revenues from the river projects and build two new dams on the river at Bridge Canyon and Marble Canyon to help finance the Arizona Project. Then we can dedicate the combined power

revenues of all these facilities to the development of additional water to augment the contracts on the Colorado River so that not only will Arizona be able to build the Central Arizona Project and have enough water for it, but make it possible to do without taking water away from the river that California badly needs and, through the use of these power revenues, increase the amount of water available to the Colorado River contractors."

Jim Carr came out here, just shortly after he was appointed, and had a talk with a number of us here in San Diego, including Mr. Heilbron and myself and people from the City of San Diego. And he wanted to sound us out to see if such an arrangement made any sense to us. We thought it did. We had always been reluctant to fight the Arizona Project because Arizona needed it and was entitled to it and should have it. On the other hand, there wasn't enough water to take care of the California contracts and the Arizona Project, ultimately. And it was obvious to us that the solution was not in litigation or in rationing or dividing up shortages but in increasing the flow of the river. So, we encouraged Carr to go ahead with Udall and see if they could put together some kind of a program that might be acceptable ultimately to the Congress and particularly to the water consumers in both Arizona and California.

So the first so-called Udall plan, the Pacific Southwest Regional Project Plan, was developed in a hurry,

frankly, without a great deal of care or authoritative research on just what they were trying to do. And this was unfortunate, but it was politically necessary because, in the meantime, the California suit had been decided against California and in favor of Arizona, which meant that there was no longer any real excuse to resist a Central Arizona Project bill. And Senator [Carl] Hayden, who had been the original sponsor of the Arizona Project bill, immediately reintroduced it and California was placed really more or less upon its honor not to resist the Central Arizona Project--our previous resistance having been on the basis that Arizona was not entitled to the water for it. Now this report said it was and we no longer had a position that Arizona would not have any right to develop the water that the Supreme Court said that it was the owner of.

So the Udall Plan was hurried and presented to southern California as a project of the Department of Interior, the Reclamation Bureau, under the Federal Flood Control Act of 1944, which requires that any such project that involves interstate water must be submitted to the affected states with a three-months' period of investigation by each of the states so that they could make a knowledgable analysis of the project as presented and a report on it. The procedure is that such a report goes to the governor of the state and he uses such facilities as he wishes in making an analysis of the plan and in his ultimate report

to the federal government. No bill that would put such a plan into authority and effect can be acted upon in Congress until either the period is run out in which the states have to report, or the reports have been made--whichever would be the shortest time.

Udall presented the plan to California and stated that, while he regretted the need for haste, both in the preparation of the plan and its consideration by California, if it was to have any effect or be of any benefit, it must be before Congress at the same time as the Central Arizona Project Bill would be considered because it involved the construction of the Central Arizona Project not as a separate project, but as a part of this overall regional development of the Colorado River. The governor referred the report to the Department of Water Resources, and the Water Commission, which is an advisory group to the Department of Water Resources, was asked to hold a series of hearings on the project, as reported in the first draft of the plan, to aid the governor in formulating a report on the project. We had the first of such hearings in Sacramento and we invited Secretary Udall to appear and submit himself to questions by the commission, and he did. He came to the meeting and brought with him the writer who was mostly responsible for the draft of the report.

In the meantime, the report had been released to the press and there were comments coming from all sources--

most of them unfavorable. They were not only unfavorable to the details of the project as outlined, but basically unfavorable to the idea of a regional project as distinguished from a series of individual projects. Now the reason for this resistance to a regional project, I think, basically, is that a regional project presupposes a permanent future operation of the projects to be constructed in the region by the federal government. In other words, they never get out of the business. The most of the western water development, and particularly in California, has been based at least upon the theory that, though the federal government may come in and assist, the project is always subject to being paid off. And, if it's paid off, either through years of meeting the repayment costs by the project beneficiaries or by their raising the money in one big sum and paying off, the federal government can be paid off, and when they're paid off, they get out of the picture and they hand the project over to its consumers.

This has been done. This was the way the All-American Canal was handled. The people of Imperial underwrote the costs of the canal, that is the reimbursable costs, and when they had paid off the costs of the canal, they demanded that it be turned over to them for operation and for ownership. And after considerable difficulties with the federal government, particularly the Reclamation Bureau, that was accomplished. So, now, Imperial operates and runs its

All-American Canal. Now compare that with what has happened in the Central Project. The Central Project in California, the Federal Central Valley Project, keeps getting bigger and bigger as additional units are tied onto it because, as a unit that has been in long operation finally gets in a good financial position, the income from that unit can be used in the development of a second unit. So you've got a sort of utility enterprise with the total revenues from all of the units being applied to new construction when that appears desirable or necessary. And it sort of visualizes a permanent federal operation of a project which may never be fully completed and, therefore, never fully paid off.

This kind of thing was just not acceptable in California, either in concept or in practicality in the actualities. The result of this difference in the basic California approach and the approach of a regional plan has resulted in a great deal of the ill feeling and shows in the litigation that has been carried on by California against the federal operations. So the whole idea of a regional project, permanent and continuing federal contributions and control, was not one which California looked to with any great satisfaction.

On the other hand, the alternate to some development on the Colorado River was the eventual reduction of the Metropolitan facilities, and the water that could be

delivered to them would mean the big Colorado River aqueduct would be running never at more than half capacity. And the water that California depended upon, particularly southern California, the coastal area, which came from the Colorado would have to be made up from imported waters from different and more expensive source--for instance from our own state project in which water costs a great deal more than our intakes from the Colorado River.

So, there was a necessity to do something about it, but whether or not a regional plan could be made acceptable was a serious question. In order to make it acceptable, it was proposed that the quantity difference, the amount that California had lost by reason of the Arizona suit, would be replaced in the Metropolitan service area at a cost no greater than water from the Colorado River. And this differential in the price to Metropolitan and the actual cost of the water delivered there was to be made up by a subsidy paid from the power revenues of the river.

Now this was an attractive plan in some ways, if it could be accomplished. On the other hand, many people were quick to point out that the great market for the power that would be sold from the river was the same area of southern California that would then take the money from the sale of that power and subsidize the cost of water to the same people, so that it was sort of robbing Peter to pay Paul or taking it from one pocket and putting it in the other.

The fallacy in such an approach was immediately apparent and a considerable hue and cry was raised regarding it. One of the very interesting things that happened at the meeting of the commission with Secretary Udall was a question asked of him by the commission.

You see, the first Udall plan proposed, not a development of additional out-of-state water for augmentation of the Colorado River, but the development of northern California water and its being brought down into the Metropolitan area of southern California and there exchanged for water from the Colorado River which would go to the Central Arizona Project. And, had it been followed out exactly in the manner planned, the Colorado River Aqueduct, this three quarter billion dollar investment that southern California has in facilities to bring water over from the Colorado River would have been one of these empty historical monuments like the great Roman aqueducts in Europe. It would just be running the wrong way. It would no longer be used and all those facilities would be abandoned and junked, because the bulk of the water would come from northern California. The water would require a subsidy of around fifty or sixty dollars an acre foot to put it into southern California at the price of the river water, and it would completely abandon these quite elaborate and expensive facilities for bringing Colorado River water here. And, of course, it had many things against it.

But when the water commission asked Mr. Udall whether

the Reclamation Bureau, in developing northern California water for importation into southern California, would follow state laws in the procedures for the acquisition of that water and also follow state laws in connection with its distribution (this, mainly, was a direct question as to whether or not the federal government would recognize California's county of origin laws with the right to recapture or reimbursement for the areas from which the water was exported), Mr. Udall said, "We would have to cross that bridge when we came to it." He said he could not say at that time, and besides it was not in his province to say the federal government would be bound by the California laws in regard to the protection of areas of origin.

Well, that practically exploded the plan as far as acceptance in northern California was concerned. And southern California could not adjust themselves to the abandonment of the Colorado River Project--just its complete abandonment. So the criticism and the resistence to the plan throughout the state was tremendous. It started in, basically, as a conflict of the basic abstract philosophy of a regional plan without ever ownership vesting in the beneficiaries. But as people began to read the quite bulky and elaborate report and began to think out these problems, then the whole thing fell apart.

There was criticism that the power revenues would never be sufficient to meet the costs of development and

the costs of subsidy for southern California, so that if it was put into effect, it would just be a raid on the federal treasury; that the prices estimated for the ultimate cost of the power developed was completely out of line and would not even be competitive with power generated by steam plants, where you used ordinary fossil fuel such as coal and oil to produce the electricity. Therefore, the plan, number one, wouldn't work and if it did work, it would cause the abandonment of the Colorado River Project and, lastly, it was a raid on California water resources by the federal government without the protection that California had voluntarily given to the areas in which water originated in its own development of the State Water Plan.

There was also another problem in it, I think--a little matter of who was going to be the boss of this whole deal. The state itself was a little bit anxious not to permit the federal government to come into the southern California water field and there compete with the state project. That was played down quite a bit but, nevertheless, it was there and the question of who would distribute the water in southern California, whether it should be the state or the federal government, was bandied about and debated.

Well, the Water Commission, after holding its hearing to which Mr. Udall was invited and at which he did tell

everything that he knew about how the project would work, held a second series of hearings, the first of which was to permit state agencies of all kinds, that is, the water distributors of the state, to come in and make their remarks. Without fail, every one of them damned the report and damned the project and would have nothing to do with it. It was a unanimous rejection of the project.

The Water Commission continued with its study and finally made a report to the Governor. The commission itself thought that the opposition to the approach of regional planning was just impractical and really self-defeating as far as California was concerned. We felt that there was a need for regional approach to the planning of projects as big as this project would have to be. We thought that it was rather stupid of California to oppose regional planning as a means to augment the Colorado River, in that it encouraged other states to take the same approach, and we felt that the real solution to the Colorado River problem was not necessarily to take California water and replace the deliveries of Colorado River water in southern California, but actually to augment the river, to increase the yield of the river by upper-basin diversions from the Snake or any of the headwaters of the Columbia or even as far down as the mouth of the Columbia. That there, in the Columbia, was a true surplus of water that California would probably be able to use in addition to its own

surplus waters, and that there was a need to go outside of the state and increase the flow of the Colorado River, both for the Central Arizona Project and to preserve the already completed and nearly paid-for facilities in southern California--the All-American Canal, the Coachella Valley Canal, and the great Colorado River Aqueduct of the Metropolitan Water District.

So while we reported factually to the Governor that there was no support and practically unanimous opposition to the project throughout the state, the Water Commission felt that the idea of regional planning was something that should be preserved and encouraged and given further study. And we recommended that, in any report that he made to the federal government, he encourage the review of further approaches to regional planning and we thought that the water consumers of California might ultimately find regional planning something more acceptable than their first reaction to it had been.

The report never reached the Congress in the form of a bill because the Congress that was considering it adjourned before any real revision had been made. But on the next session of Congress, a revised report was presented by Udall and it authorized the Central Arizona Project. It also authorized the pooling of the resources of the river, and it suggested that a study be made of alternate choices for augmenting the actual flow in the river itself. This

would have included, of course, the study of California surpluses as a source as well as other western state sources in Idaho and Washington and Oregon. Nothing yet has come out of the setup.

The second Udall plan report was a better and a more acceptable one. It was given a great deal more of technical attention in its preparation. And it has not received nearly the criticism in California as did the first Udall report. But because it did point to the possible importation of water from other states, there was an immediate defensive action taken in Idaho and Washington and Oregon to try to control any export of their surplus waters to California or into Arizona through the Colorado River system without their consent and under terms and conditions which would be acceptable to them. That's about where the thing rests at the present time.

There is a tentative agreement between Arizona and California in support of a regional project bill along the lines of bringing at least two and a half million acre feet into the Colorado River from sources not yet determined, and a priority to California's adjudicated right of four-point-four million acre feet per annum from the river until this two and a half million import into the Colorado River is an existing fact. This program still includes this tremendous subsidy to give southern California the water that it would lose otherwise at the cost of the river itself and

the power consumers. It still has the same criticisms as to the economics of that kind of an approach as the original Udall plan has.

The federal Bureau of the Budget has taken a view that is partly in support of the proposal and partly negating it, in that the only justification for the federal subsidy that the Budget Bureau has approved is subsidy to the extent of the federal government picking up the tab for supplying sufficient water to meet the commitments of the Mexican Treaty, which is basically a federal responsibility. And the Bureau of the Budget has recognized that and appears willing to approve a federal subsidy to the extent of the million and a half acre feet that we have to export from the river to Mexico each year but not to the extent necessary to make another million acre feet available to southern California at what was proposed to be at the same price as the river water regardless of where it might come from. What will come from it I don't know.

There is one problem that seems to me to have not been thoroughly thrashed out and that is the fact that these huge regional import-export projects must be based upon a long-time planning approach and a long-time construction approach. Yet to accomplish that, the planning and the designing and the negotiations for the source from which the water is to be exported, have to be carried on, on the basis of the ultimate construction of the project.

Now this means that you have to plan, in the case of the Colorado River, for an import project that would actually double the size of the river. You'd bring ten to fifteen million acre feet of water into the river. You could construct it in stages as the water was needed, but, basically, many of the features would have to be constructed for the ultimate use--such things as tunnels. It's cheaper to construct a tunnel twice as big as you need than it is to construct two tunnels of the size that you need. And many of those things will have to be commited and the monies appropriated and, to some extent, spent. The long-range approach completely overlooks the fact that there may be developments in seawater conversion and that sort of thing, that may ultimately make these big transport projects as obsolete as the Roman aqueducts.

The difficulty in carrying on a long-range planning with the ability to chop it off at any point, without a commitment that obligates the construction of huge facilities that may very well be obsolete by the time they're completed, is something that we haven't grappled with enough to know what the solution is. But one of the objections to these long-range plans is that it commits you in one direction which the development of atomic energy, combination electrical-generating, saltwater desalting plants, may just make as obsolete as the dodo. And yet a huge expenditure committed towards their construction and to the preliminary

facilities for the first staging of projects is necessary.

The final outcome of the thing, of course, can't be foreseen, but for the first time in all the years that I've been associated with water, these various alternatives and this long-range approach and the possibility of seawater conversion are all in the forefront in the minds of those people who are responsible for the ultimate solutions of the water problems, at least, in the United States. And I think that's a very hopeful sign.

HALL: The history of water development in California and the Southwest, then, is a constant evolution from local development to intra-state development to regional development. In the process, the three primary governmental bodies--local, state, and federal--have had to cooperate in the development of water resources. How has this evolutionary process affected the nature and practice of water law?

JENNINGS: It's had a very great effect upon water law, its practice and its adjudication, and the decisions which have come about. They've been so gradual that I think that many lawyers have been unconscious of the tremendous change that has been made in, say, the last thirty years of water law. When water was basically an individual development, it was a property right just like the ownership of real property.

As a matter of fact, there were many, many facets of

water law that were just a part of real-property law. For instance, the individual riparian right was owned by the individual who happened to own land that was riparian or adjacent to a stream. The appropriative doctrine came along and was developed and it was a right acquired, following certain procedures, to take water and notify the riparian owners and other users of the stream who could contest it if they cared to do so. And the appropriative doctrine was a right to take any surplus of the water from the stream, if you followed the proper procedure, and take it away to another area.

The third major right was again an individual's right. It was the right of an overlying owner to pump water from his land. Now, originally, the two rights that existed by reason of property ownership, that is, the riparian right and the overlying landowner's right, were absolutely unlimited and unrestricted rights in quantity. The upstream riparian owner could take all of the water of the stream, cutting off entirely from the downstream owners, provided that he took it for use upon his riparian lands only and didn't take it out of the watershed. But to that extent, he could use it all if he put it to beneficial use on his land. That took it all, and that was all there was to it.

Now the overlying owner, originally, had the same right. He could put a well on his land and he could pump the well water. He excavated this water and mined it out

of his land just as though it were a gravel pit or a gold mine. After he got it to the surface and took this water into possession, he could do anything he wanted with it. He could haul it twenty miles away over to the next watershed or sell it. He had an unlimited right to extract whatever water lay under his land, regardless of the fact that, when he did so, he might be pulling it down from areas all around his property.

The appropriator was limited to the amount of his appropriation, and he had to go through the mechanics of claiming it. He had to file an appropriation and get a permit to take the water, but once having got his permit through, he had an unlimited right to take that quantity of water for use upon that particular land, even though it were a hundred miles away.

Now these rights originally were those of individuals. The first organization that sought to put together these rights in a package and get a product to distribute were mutual water corporations. Now these were private corporations made up of landowners that issued stock to their landowners, and the amount of stock was made pertinent to a described parcel of land. So that stockholder had the right to take from the mutual water company the percentage of water that his stock bore to the percentage of stock that was issued. This was a way that, for instance, a number of overlying owners or a number of riparian owners

or appropriators could put together individual rights and then serve those individual rights to a group.

Now at this time, and in this stage of water law development, water law was a thing of individual rights or, through mutuals, a combination of individual rights. But they were still based upon individual rights of people who either through overlying land ownership or riparian land ownership or through the appropriative process had acquired a water right that could be distributed to an aggregate of those right owners. There were still individual water rights and that was the law of individual water rights. It became obvious that this unfairness of, say, for instance, an upper riparian owner or an overlying landowner that would sink a deep well and take all the water away, was an arbitrary situation that, in an area of not-too-adequate water supply, just wreaked havoc with those people whose rights were lost. Even the appropriator lost his rights if a prior appropriator needed the water and the appropriative right was "first in time, first in right." So, if you had more appropriators at one time than a source would take care of, you chopped off all lower ones and the upper ones kept their entire right.

Well, this approach was too arbitrary and too upsetting to an economy that was based upon everyone using his share of the water. And the courts began to interpret that these rights were not absolute but were correlative. In other

words, if you had ten riparian owners and enough water to supply all of them but not with as much as they really would like to have, the correlative rights meant that they had to share the water that was available and the top man on the stream couldn't take it all. They could be restrained and enjoined; the courts would enforce that.

The next step was making that correlative right apply to the underground water and to the overlying water right. And, in a case in the early 1900's, the City of Riverside against the City of San Bernardino, this correlative right was established to the extent that no one could take all the water to the detriment of his neighbors, even though each of them, had, theoretically, a legal right to take all the water they could pump from under their land.

With these correlative right cases, a little different philosophy began to take place. The public and the law and the Legislature began to see water as an essential of life, the same as air, and that no one could, by mere happenchance, be in the position to prevent his neighbors from having a correlative right with him in this absolute necessity of life. It took a long time for this doctrine to be applied amongst the appropriators, however, and it wasn't until the mid-forties when there was a case on the Raymond Basin in Los Angeles County (it's known by all the attorneys as the Pasadena Case) that the court actually applied to appropriative rights a correlative position,

instead of the "first in time, first in right" that people had used for time immemorial through appropriation or overlying ownership or riparian, a common source of water. So that meant their rights became correlative and that everyone took a percentage of what water there was instead of someone taking all they needed at the expense of someone else.

Well, this correlative theory was resisted and particularly by the old-time water lawyers who said here was a sort of a socialistic approach, sharing of water, and that it was a denial of the private rights of private property and all that sort of thing. But, nevertheless, it prevailed because, of course, it was necessary that the water be shared and that someone by mere good fortune or the location of land could not deny others the right to use this thing which is the lifeblood, of course, of the economy and population and the development of land. At first this doctrine, though, was basically applied to individuals between themselves. And the local districts opposed it very much and took the attitude, "Well, at least, what rights we local districts have are firm and cannot be taken from us or we cannot be made to share.

And so the next attack, or the next modification of the law, was the step beyond individuals having correlative rights to public agencies having correlative rights. This transition is still in the process of development. The

situation, for instance, when the City of Los Angeles went up into the Owens Basin and condemned all the water rights of that area would not be possible today. Any attempt to do that sort of thing would immediately be confronted with this attitude that you cannot take from anyone the only water they have. You can take their surpluses and they've got to surrender their surpluses because no one has the right to retain surpluses when they're needed someplace else. But you can't take the last drop of water and dry up an area without replacing it some way or other. And that's the position that we are in now, really a transition approach.

The state felt, and still does feel to a considerable extent, that all rights within our own boundaries are ours. We can prorate water and have correlative rights and uses, but that's for the water within our state. We own that and so no one else from some other state could come in here and take the water that we, the people of this state, own exclusively against the world. These regional developments that we are finally going into have to be based upon the idea that, even nationally, water rights are correlative. That surpluses must be made available to areas of deficiency. And the protection of the areas of surplus must be guaranteed to the extent that no state or no district or no individual can take the last drop of water away from someone else. You can take their surpluses and they have to let you have

them, but in taking their surpluses, you have to compensate by making it possible for them to develop the more expensive sources of water that are left to them after you take their cheapest supply.

Now that approach has been fought, and lawyers, by training and everything about their education and their practice, tend towards trying to hang on to the law as it was and to decide everything on the basis of what has been decided before. It's a struggle to try to shake that viewpoint, either amongst lawyers or in the law itself.

The courts, to their credit, have been most active in overlooking the precedents of former decisions and directly facing the responsibility that water, like air, like the timber, all the natural resources, is the property of all the people and must be shared on an equitable basis rather than on the straight legal basis of "first in time, first in right" or, "I own this thing and I can keep it against your use for my own selfish benefit." That is so apparent in the later decisions of the very highest courts. They've kept ahead of the Legislature in this sort of thing.

The Legislatures still have a tendency to say, "We own it, and we won't permit it to be taken from us." But from the correlative position of individuals through the correlative position of groups of individuals, through districts and cities and that sort of thing, statewide, and finally through this regional planning approach, we're

coming to the ultimate, which is that we will make the full use of this resource of water. Wherever it's located, those people will be protected, but if there's any surplus, others in a less favorable location will have the right to take it and share in it. And the law will protect them in that right as well as protecting the local people against a raid of their water resources to their own detriment. It's a thing still in the stage of transition from the selfish individual's supreme right to the use of his property as he sees fit, to the point where everyone will share the use of the property as long as it can be done without detriment to them.

CHAPTER IX

COMMENTARY ON MEXICAN WATER TREATY

While San Diego water leaders were studying the pros and cons of importing our own allocation of water from the All-American Canal or joining Metropolitan, things were happening on a stage remote from the scene of our discussions, the significance of which we knew little or nothing. The Colorado River Compact, dividing the river water between the upper-basin states and the lower-basin states was signed by all of the seven basin states except Arizona in 1923, and presented to Congress for approval in 1925. When Congress passed the Boulder Canyon Project Act authorizing Hoover Dam in 1928, it was conditioned on either obtaining Arizona's approval of the Compact or the passage by the California Legislature of an act limiting California's annual use of the water to not more than four-point-four million acre feet of water annually from the seven-point-five million acre feet apportioned by the Compact to the lower basin, plus one-half of the "surplus" water unapportioned by the compact. The best estimate at that time was that the river produced about twenty million acre feet annually, leaving a five million surplus after the fifteen million was divided between the two basins. In any event, the California Legislature

adopted the Limitation Act in 1929, and the Project Act became effective on that basis.

While at that time we all thought there was plenty of water in the river, following the adoption of the Limitation Act, the six California contractors met to apportion the California water amongst them. The apportionment was worked out on the basis of historical appropriations and water uses, with senior priorities totalling 3,850,000 acre feet going to Imperial, Palo Verde and Coachella Valleys, the next 550,000 acre feet to Metropolitan, then an additional 550,000 acre feet to Metropolitan, and finally 112,000 acre feet to San Diego. This was fine, if, as everyone then thought, there was an undivided surplus yet available, but it is to be noted that out of the four-point-four million acre feet referred to in the Limitation Act, the priorities provided to the desert agriculturists, plus the first half of Metropolitan's allocation, exhausted the amount available unless such surpluses actually existed. That meant, in the event the limitation was enforced, there would be no water to fill the allocation to San Diego and the second half of Metropolitan's allocation.

While no one was greatly concerned, prudence indicated a long, hard look at the actual quantities of water available from the river. The six California contractors, Imperial and Palo Verde Irrigation Districts, the Cities of San Diego and Los Angeles, the Coachella County Water District

and Metropolitan, supported legislation creating the Colorado River Board, empowered to employ the necessary staff to study the adequacy of the river to meet its present and future demands, to negotiate with the other Colorado River states and to be the official representative of the state in protecting the state's rights in the river.

In making a study on the true extent of the available water in the river, this board at an early date became alarmed over the ultimate availability of water to meet California's uses, and began an attempt to educate the other states regarding the possibility of shortages. This approach was not well received by the other Colorado River states, mainly because, unlike California which had constructed its diverting facilities, the Metropolitan Aqueduct and the All-American Canal, they all had big projects planned needing federal assistance which they felt might be denied if Congress was informed of the possible lack of water to supply them.

Convinced that the river would not support the planned projects, and concerned that the Limitation Act would cut off San Diego's allocation and one-half of Metropolitan's, the Colorado River Board adopted the very unpopular position of opposition to all projects to divert additional water from the river and particularly in the lower basin. This started the long-drawn-out feud with Arizona which resulted in the fourteen-year Supreme Court case of Arizona vs.

California. The result of that suit limited California to the Limitation Act as against Arizona projects, but left to the future the method of proration of any shortage should Arizona construct its proposed projects.

Even before this litigation developed and before the San Diego County Water Authority joined Metropolitan, we found ourselves in a pitched battle through our membership in the Colorado River Board over what we considered a raid on the river by the federal government under the terms of a proposed treaty with Mexico.

As early as the 1890's, Mexico had begun to protest what it termed excessive diversions in the United States of waters of the Rio Grande. In an attempt to settle this problem, a treaty was entered into in 1906 by which the United States agreed to deliver to Mexico, without cost, 60,000 acre feet annually. This obligation became burdensome to United States users and particularly to Texas landowners, and in 1930 a recommendation was made by the State Department that a study be made as the basis for a new treaty which would result in an equitable division between Mexico and the United States of the three international rivers in which the two countries were involved. These were the Rio Grande, the Colorado, and the Tijuana, which crosses the International Boundary in San Diego County.

A proposal was worked out and presented to the

President and the Senate in 1944. During its preparation, Senator Tom Connally of Texas was chairman of the powerful Foreign Relations Committee of the Senate, and we in California were convinced that he used his influence to reduce the Mexican demands upon the Rio Grande by giving to Mexico a far greater amount of Colorado River water than Mexico's historical use of that river's water justified. The treaty as submitted for ratification guaranteed Mexico one and a half million acre feet annually to be supplied first, from any surplus in the river, and secondly, absent a surplus, one-half from the water allocated by the Compact to each basin.

The Colorado River Board's studies had convinced Californians that no real surplus existed, and that neither basin could develop their full uses if required to supply the Mexican water from their allocations.

A real battle was waged by the California water people to defeat the treaty, and for that purpose to convince the other Colorado River states of the shortage we were sure would result. We were accused of being water hogs, bad neighbors, and of not acting in good faith. The upper-basin states were attempting to put together an upper-basin development project, and Arizona was seeking Congressional support for a Central Arizona Project. Both needed the support of Senator Connally, and neither cared what might happen to California's projects. Accordingly, the other

six states supported the treaty, and it was signed by the President in November, 1944, approved in the Senate the following year, and became effective in November, 1945.

Mexico immediately expanded its developments in the river's source area below the border, and for some time now has used the entire allocation provided by the treaty.

The results of the treaty and the Arizona suit are quite serious to Metropolitan and the Water Authority. When the uses in the United States are fully developed, San Diego's water transferred to Metropolitan by the terms of annexation will be gone, as will one-half of Metropolitan's. Metropolitan's 1,200,000 acre feet aqueduct will operate at half capacity, and the water loss will be made up from the much more expensive California Project water. It is very little comfort to us that the other Colorado River states now realize their folly, and are now desperately attempting a project to augment the river by a diversion of at least two and a half million acre feet per annum from the Columbia River.

INDEX