



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-5

September 25, 1997

To: Board of Directors (Executive Committee--Action)
From: General Manager
General Counsel
Subject: Colorado River -- Desalting Agricultural Drainage Water; Application for Appropriative Water Rights

RECOMMENDATION(S)

That the Board ratify the September 9, 1997 filing of applications with the State Water Resources Control Board to appropriate agricultural drainage water in the Whitewater and Alamo Rivers.

EXECUTIVE SUMMARY

To protect the interests of the District, the General Manager and General Counsel determined that it was necessary to file for appropriative rights on the Whitewater and Alamo Rivers. The applications were filed on September 9, 1997, after the Board's September meeting. This followed Coachella Valley Water District's (Coachella) notification of Metropolitan, at the commencement of the Board meeting, that Coachella had already filed for appropriative water rights on the Whitewater River. It was also reported that a number of other parties were planning identical filings. Based upon Metropolitan's staff's review of the situation subsequent to the Board meeting, it was decided that a further delay in filing would jeopardize Metropolitan's ability to successfully file for such rights. As a result of this prompt action, Metropolitan was the first agency to file for appropriative rights on the Alamo River and Metropolitan and Coachella will have their Whitewater River applications jointly heard by the State Water Resources Control Board. These actions protected the priority of Metropolitan's appropriation applications pursuant to California Water Code §1450.

DETAILED REPORT

As the Board is aware, Metropolitan filed an application for the appropriation of agricultural drainage water in the Whitewater and Alamo Rivers with the State Water Resources Control Board on September 9, 1997. It had been the intent of staff to discuss this issue in more detail at the October meeting of the Board and ask for a decision on whether or not to file for the appropriative rights at that meeting. However, as announced at the September Board meeting and explained more fully in the September 10th letter from the General Manager and General Counsel, the filing for appropriative rights by Coachella and the reported imminent filings by

others forced immediate filing of Metropolitan's applications. The developing scenario was that there would be multiple applications to appropriate the same drainage water with Metropolitan's applications being among the last filed if it had waited until after the October Board meeting. A legal maxim with regard to appropriative rights is "first in time, first in right" which is firmly established in case law and California's Water Code (*Irwin v. Phillips* (1855) 5 Cal. 140, 147; *People v. Shirokow* (1980) 26 Cal. 3d 301, 307-308; Water Code § 1450.) Thus if all things are equal among several competing applications, the order of priority could be a crucial factor in the hearing before the State Board. Staff concluded that any delay in filing would only jeopardize Metropolitan's standing in this potential project and Special Counsel concurred with staff's assessment of the situation.

Metropolitan has offered to work cooperatively with both Coachella and the Imperial Irrigation District in developing a program to reclaim the drainage water should such a project ultimately prove feasible. In Coachella's appropriation application and its cover letter, Coachella states clearly that any such reclamation project will necessarily involve Metropolitan and our service area. It is hard to imagine any possible complaint these agencies or others could have to a program that would beneficially reclaim abandoned drainage water that is currently unused and wasted, would help California reduce its reliance on the Colorado River, and could improve conditions in the Salton Sea.

Staff is in the process of analyzing the reconnaissance level study to determine the next steps necessary for investigating the ultimate feasibility of this proposed project. As a result of this analysis, a detailed work plan will be developed with an accompanying time frame. A full report will be made to the Board when this work plan has been completed.

It must be remembered that Metropolitan can abandon the water rights process at any time. In no way does the mere act of filing for the water rights commit Metropolitan to any environmental or other liability for the ongoing problems of the Salton Sea. Should further investigation reveal that this project is not cost-effective or otherwise not feasible for any reason, Metropolitan may end the application process at that time without liability. For all these reasons, staff recommends that the Board ratify the action of September 9, 1997 in filing for appropriative rights on the Whitewater and Alamo Rivers.

Copies of the correspondence regarding the applications are attached for your information.

JK:gm
#6741

Attachment(s)



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 10, 1997

All Directors

General Manager and General Counsel

Application to File for Appropriative Water Rights

We are writing to advise you that we have been forced to act expeditiously to protect Metropolitan's ability to pursue the possible development of an agricultural drainage water desalting project on the Alamo and Whitewater Rivers. As you know, the project has the potential of providing considerable benefits for all of the communities we serve, and we have been keeping the Imperial and Coachella Valley Irrigation Districts and the Director of the Department of Water Resources, Dave Kennedy, informed of our progress. The issue was scheduled for full discussion by the Metropolitan Board at its October meeting.

Without any advance notice, however, the Coachella Valley Water District this week abruptly filed applications to appropriate water from the Whitewater River for its own purposes. After consultation with our legal counsel and with the Chairman of the Metropolitan Board, John Foley, we have had no choice but to submit our own application for appropriative rights on the Alamo and Whitewater Rivers in order to preserve the viability of the desalting project and protect Metropolitan's interest in its possible future development.

This filing is purely defensive and prevents any other parties from jumping ahead of Metropolitan in placing a claim on the same water. It does not commit us to any future action. An application to appropriate water rights does not carry any liability in and of itself, nor would the granting of water rights impart any legal liabilities for Metropolitan. If, after further evaluation, the Board determines that such rights are not in the district's best interest, we can withdraw our application at any time.

California is under pressure to reduce its dependence on the Colorado River and this desalting project holds the potential of providing up to 400,000 acre feet per year to help the state make up for those reductions. So far, all of the investigations of its possible value to California have been conducted at Metropolitan's sole expense, and our preliminary reconnaissance suggests that it could indeed be a cost-effective source of water for the 16 million Californians we serve. But there are many unknowns and only a detailed in-depth study can determine its ultimate feasibility.

—

September 10, 1997

By way of background, the General Counsel consulted with Anne Schneider, a respected water rights expert, who advised that, due to the legal principle of "first in time, first in right," the district should file for appropriative rights on the two rivers as soon as possible. We advised Mr. Kennedy and the agricultural districts of our progress and of our interest in filing the recommended applications. But at the specific request of the Imperial Irrigation District, we deferred taking any such action pending further consultation with the Imperial and Coachella Districts and the Salton Sea Authority.

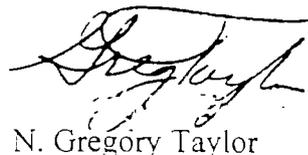
That was how things stood when we discussed the project with your Board at the beginning of this week. Then we learned of Coachella's action. Waiting any longer to file an application on behalf of Metropolitan, we were advised, would only allow others to file their own applications in advance of our District, thereby further reducing the prospects that this project could ever be carried out. We were warned that Coachella's filing could very well precipitate a number of applications by other agencies, and indeed, a number of agencies have expressed such an interest. Under these circumstances, the wisest and safest course for Metropolitan was prompt action.

We remain hopeful that we will be able to proceed cooperatively with the investigation of this project. In his letter to the State Water Resources Control Board, Coachella's General Manager and Chief Engineer Tom Levy indicates a willingness to work jointly with Metropolitan in the future. And we have certainly expressed to Coachella and Imperial our interest in a partnership on this project.

We strongly support further careful investigation of the desalting project. Its potential value to Southern California is just too great. By filing these water rights applications, we have acted to protect those values.



John R. Wodraska



N. Gregory Taylor

Enclosures



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 15, 1997

To: Board of Directors
From: General Counsel
Subject: **Appropriation of Agricultural Drainage**

Some questions have arisen as to when Metropolitan actually filed applications with the State Water Resources Control Board (SWRCB) for appropriation of agricultural drainage water in the Salton Sea area.

Applications for appropriation of agricultural drainage water on the Whitewater and the Alamo River were filed after 3:00 p.m. on September 9, 1997. The filing was a defensive action in response to the filing by Coachella on the Whitewater River; notice of the Coachella filing was first received during Metropolitan's Board meeting on September 9th.

The questions regarding Metropolitan's filing have centered on the date of the application and the cover letter to the SWRCB which are both dated September 8, 1997. The application and cover letter were prepared in advance but were held in abeyance pending direction from the Board or future developments. As explained, future developments in the form of Coachella's action forced the filing of the prepared applications on September 9, 1997. Attached to this memo are copies of the cover sheets from both applications showing (in the lower right hand corner) the September 9th date of filing, the filing fees paid, and the clerk's initials as inscribed by the clerk at the SWRCB.

This should put to rest any rumors regarding the date of filing of these applications. If there are any questions, please feel free to contact me.



N. Gregory Taylor

Encls.
#6557

MINIMUM FEE: \$100.00
 FILE ORIGINAL & ONE COPY
 TYPE OR PRINT IN BLACK INK
 (For explanation of entries required, see
 booklet "How to File an Application to
 Appropriate Water in California")

STATE OF CALIFORNIA
 State Water Resource Control Board
 DIVISION OF WATER RIGHTS
 901 P Street, Sacramento
 PO Box 2000, Sacramento, CA 95812-2000

Check one box (only) APPLICATION TO APPROPRIATE WATER BY PERMIT
 or
 REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION*

(If this form is used to register a small domestic use appropriation, the terms "application" and "applicant" herein, and in related forms, shall mean "registration" and "registrant".)

Application No. _____
 (Leave blank)

1. APPLICANT

The Metropolitan Water District of Southern California (213) 217-6000
 (Name of applicant) (Telephone number where you may be reached between 8 a.m. and 5 p.m. - include area code)

PO Box 54153 Los Angeles California 90054-0153
 (Mailing address) (City or town) (State) (Zip code)

2. SOURCE

a. The name of the source at the point of diversion is Alamo River and Ag. Drains in the vicinity of the Alamo River
 (If unnamed, state that it is an unnamed stream, spring, etc.)
 tributary to Salton Sea
 b. In a normal year does the stream dry up at any point downstream from your project? YES NO if yes, during what months is it usually dry? From _____ to _____
 what alternate sources are available to your project should a portion of your requested direct diversion season be excluded because of a dry stream or nonavailability of water? See Attachment 1

3. POINTS OF DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of Imperial County

b. List all points giving coordinate distances from section corner or other tie as allowed by Board regulations i.e., California Coordinate System

Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
See Attachment 1				
1/4 of 1/4 of				
1/4 of 1/4 of				
1/4 of 1/4 of				
1/4 of 1/4 of				

c. Does applicant own the land at the point of diversion? YES NO

d. If applicant does not own the land at point of diversion, state name and address of owner and what steps have been taken to obtain right of access: See Attachment 1

4. PURPOSE OF USE, AMOUNT and SEASON

a. In the table below, state the purpose(s) for which water is to be appropriated, the quantities of water for each purpose, and the dates between which diversions will be made. Use gallons per day if rate is less than 0.025 cubic foot per second (approximately 16,000 gallons per day). Purpose must only be "Domestic" for registration of small domestic use."

PURPOSE OF USE (Irrigation, Domestic, etc.)	DIRECT DIVERSION				STORAGE		
	QUANTITY		SEASON OF DIVERSION		AMOUNT	COLLECTION SEASON	
	RATE (Cubic feet per second or gallons per day)	AMOUNT (Acre-feet per year)	Beginning Date (Mo. & Day)	Ending Date (Mo. & Day)	Acre-feet per annum	Beginning Date (Mo. & Day)	Ending Date (Mo. & Day)
Municipal, Industrial	800 cfs	475,000	1/1	12/31			
Irrigation/Fish & Wildlife							
		475,000	TOTAL AMOUNT			TOTAL AMOUNT	

b. Total combined amount taken by direct diversion and storage during any one year will be 475,000 acre-feet.
 *Not to exceed 4,500 gallons per day by direct diversion or 10 acre-feet per annum by storage.

9/9/97
 Pd \$1000
 \$85000
 FOR0053-R168

MINIMUM FEE: \$100.00
 FILE ORIGINAL & ONE COPY
 TYPE OR PRINT IN BLACK INK
 (For explanation of entries required, see
 booklet "How to File an Application to
 Appropriate Water in California")

STATE OF CALIFORNIA
 State Water Resources Control Board
 DIVISION OF WATER RIGHTS
 901 P Street, Sacramento
 PO Box 2000, Sacramento, CA 95812-2000

APPLICATION TO APPROPRIATE WATER BY PERMIT

or

REGISTRATION OF SMALL DOMESTIC USE APPROPRIATION*

Check one
 box (only)

(If this form is used to register a small domestic use
 appropriation, the terms "application" and "applicant" herein, and
 in related forms, shall mean "registration" and "registrant".)

Application No. _____
 (Leave blank)

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The Metropolitan Water District of Southern California (213) 217-6000
 (Name of applicant) (Telephone number where you may be reached
 between 8 a.m. and 5 p.m. - include area code)

PO Box 54153 Los Angeles California 90054-0153
 (Mailing address) (City or town) (State) (Zip code)

2. SOURCE

a. The name of the source at the point of diversion is Whitewater River and Ag. Drains in the vicinity of the
 Whitewater River
 (If unnamed, state that it is an unnamed stream, spring, etc.)

tributary to Salton Sea

b. In a normal year does the stream dry up at any point downstream from your project? YES NO if yes, during
 what months is it usually dry? From _____ to _____
 what alternate sources are available to your project should a portion of your requested direct diversion season be
 excluded because of a dry stream or nonavailability of water? See Attachment 1

3. POINTS OF DIVERSION and REDIVERSION

a. The point(s) of diversion will be in the County of Riverside County

b.

List all points giving coordinate distances from section corner or other tie as allowed by Board regulations i.e., California Coordinate System	Point is within (40-acre subdivision)	Section	Township	Range	Base and Meridian
See Attachment 1	1/4 of 1/4 of				
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PURPOSE OF USE (Irrigation, Domestic, etc.)	DIRECT DIVERSION				STORAGE		
	QUANTITY		SEASON OF DIVERSION		AMOUNT	COLLECTION SEASON	
	RATE (Cubic feet per second or gallons per day)	AMOUNT (Acre-feet per year)	Beginning Date (Mo. & Day)	Ending Date (Mo. & Day)	Acre-feet per annum	Beginning Date (Mo. & Day)	Ending Date (Mo. & Day)
Municipal & Industrial	100 cfs	100,000	1/1	12/31	100,000	1/1	12/31
Irrigation/Fish & Wildlife							
		100,000	TOTAL AMOUNT		100,000	TOTAL AMOUNT	

b. Total combined amount taken by direct diversion and storage during any one year will be 100,000 acre-feet.
 * Not to exceed 4,500 gallons per day by direct diversion or 10 acre-feet per annum by storage.

9/19/77
 MS 10000
 4,500
 FOR0053-R1

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 9, 1997

Mr. Tom Levy
General Manager
Coachella Valley Water District
P.O. Box 1058
Coachella, CA 92236

Dear Mr. Levy:

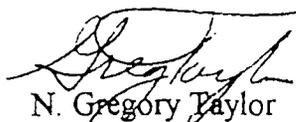
Applications to Appropriate Water of the Whitewater and Alamo Rivers

In light of the applications filed by the Coachella Valley Water District on the Whitewater River, to protect its interests Metropolitan has filed applications to appropriate water on the Alamo and the Whitewater Rivers. These applications envision a project to divert and desalinate agricultural return flows from the Imperial Irrigation District and Coachella Valley Water District before those return flows reach the Salton Sea.

The Whitewater River application includes an underground storage component. Underground storage of water appropriated under these applications would, of course, be subject to full agreement and coordination with Coachella.

We agree with you that this project offers many opportunities for partnering with Coachella and we look forward to working with your agency on this project.

Very truly yours.


N. Gregory Taylor
General Counsel

NGT:db
#6527

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 9, 1997

Mr. Mike Clinton
General Manager
Imperial Irrigation District
1284 Main Street
P.O. Box 1809
El Centro, CA 92243

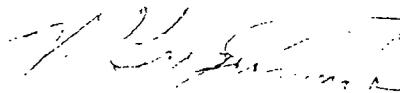
Dear Mr. Clinton:

Applications to Appropriate Water of the Whitewater and Alamo Rivers

In light of the applications filed by the Coachella Valley Water District on the Whitewater River, to protect its interests Metropolitan has filed applications to appropriate water on the Alamo and the Whitewater Rivers. These applications envision a project to divert and desalinate agricultural return flows from the Imperial Irrigation District and Coachella Valley Water District before those return flows reach the Salton Sea.

We agree with Tom Levy that this project offers many opportunities for partnering with both Coachella and Imperial. We anticipate that any future project will be an important part of the California Plan and will help California reduce its reliance on Colorado River water. Additionally, there are potential benefits to the local environment and the Salton Sea that are important to consider. We look forward to working with your agency on this project.

Very truly yours.



N. Gregory Taylor
General Counsel

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 8, 1997

Mr. Edward C. Anton, Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 94812-2000

Dear Mr. Anton:

Applications to Appropriate Water of the Whitewater and Alamo Rivers

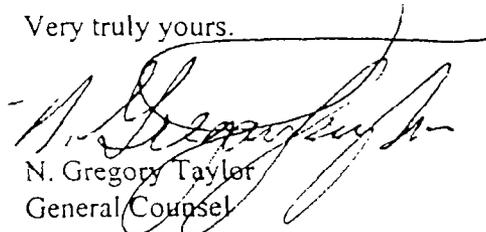
Enclosed are applications I am filing on behalf of The Metropolitan Water District of Southern California (MWD), as General Counsel, in order to insure that these applications are assigned as early a priority date as possible. These applications envision a project to divert and desalinate agricultural return flows from the Imperial Irrigation District and Coachella Valley Water District before those return flows reach the Salton Sea. It is clear that this water will only be available so long as agricultural return flows are generated by those districts. It is anticipated, however, that there will be water available for this project even though the supply of available return flow is likely to be reduced by additional conservation and efficiency measures undertaken by the irrigation districts.

The Whitewater River application includes an underground storage component. Underground storage of water appropriated under these applications would, of course, be subject to full agreement and coordination with the Coachella Valley Water District.

This project is currently an element in David Kennedy's "California Plan" for the Colorado River. Desalination of agricultural return flows would provide additional water supply for a later phase of that plan, and is expected to be needed in the 2015 to 2020 period. Given the complexity of the project and breadth of issues involved, it is prudent to proceed to file applications which can serve the California Plan process in the future. If, in the course of negotiations related to that Plan, it appears that the desalination of agricultural return flows project might advantageously be pursued as a joint project with other Colorado River contractors, it will be my recommendation that we consider that possibility.

I will ask my staff to contact you to be certain that these applications are complete and will be accepted immediately for filing.

Very truly yours,



N. Gregory Taylor
General Counsel



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COACHELLA VALLEY WATER DISTRICT

POST OFFICE BOX 1068 • COACHELLA, CALIFORNIA 92238 • TELEPHONE (619) 388-2851

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DOROTHY M. DE LAY
THEODORE J. FISH

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BERNARDINE SUTTON, SECRETARY
OWEN McCOOK, ASSISTANT GENERAL MANAGER
REDWINE AND SHERILL, ATTORNEYS

September 8, 1997

Ed Anton
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812

Dear Mr. Anton:

Subject: Application to Appropriate Water By Permit
Coachella Valley Stormwater Channel

Enclosed are two applications to appropriate the flow of the Coachella Valley Stormwater Channel (also known as the Whitewater Stormwater Channel) at two locations in the lower Coachella Valley. Also enclosed is the environmental information and two checks for \$3,300 each.

Recognizing that substantial environmental analysis will be required in order to obtain the necessary 404 permits for diversion and the environmentally sensitive issues related to the Salton Sea together with pilot treatment studies, we have estimated that construction will start in five years.

We believe that this resource will benefit both the Coachella Valley and the Metropolitan Water District of Southern California service area in coastal Southern California. Therefore we have included both service areas as the place of use. We anticipate that the development will be a joint effort with the Metropolitan Water District of Southern California and we wish to reserve the right to amend our permit to add Metropolitan at a later date.

If you have any questions please contact me.

Yours very truly,

Tom Levy
General Manager-Chief Engineer

TEL:bas/waterrts

Enclosures/as

TRUE CONSERVATION
USE WATER WISELY