



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager



March 11, 2015

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

Comment Letter: Salton Sea

The Metropolitan Water District of Southern California (Metropolitan) submits these comments pursuant to the State Water Resources Control Board's (State Water Board) Notice of Public Workshop and Solicitation of Comments Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013 (Notice). Metropolitan appreciates the State Water Board's consideration of its comments. As explained below, Metropolitan continues to adhere to the jurisdictional objection it raised in its protest to the original petition filed by the Imperial Irrigation District (IID) that resulted in Revised Order WRO 2002-0013. With regard to the Salton Sea issues identified in the Notice, the authority to identify and implement programs for restoration of the Salton Sea is vested in the Natural Resources Agency and its departments and Metropolitan respectfully submits that responsibility for Salton Sea issues appropriately resides with the Resources Agency.

State Water Board should avoid re-opening jurisdictional disputes or the QSA

Revised Order WRO 2002-0013 resulted from a 1998 joint IID and San Diego County Water Authority (SDCWA) petition seeking approval of changes in point of diversion, place of use and purpose of use, in IID's Permit 7643 related to Colorado River water. As subsequently amended, the petition sought approval of a change in place of diversion and use and purpose of use to allow the transfer of up to 200,000 acre-feet annually of conserved Colorado River water to the SDCWA. An additional 100,000 acre-feet would be conserved for acquisition and use by the Coachella Valley Water District (CVWD). The water acquired by CVWD could potentially be available for Metropolitan if CVWD elects not to use it, but that has not occurred to date. Both CVWD and Metropolitan have contracts with the Secretary of the Interior for delivery and use of Colorado River water. The water transfer to SDCWA and acquisition by CVWD are part of the Quantification Settlement Agreement (QSA) among IID, CVWD, and Metropolitan, and related

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agreements that put aside disputes among the parties over their respective use of Colorado River water supplies.

Metropolitan filed a protest against IID and SDCWA's 1998 petition asserting, among other objections, that the State Water Board does not have jurisdiction over the delivery and use of Colorado River water. The use of Colorado River water in the lower basin states of Arizona, California, and Nevada is governed by the Boulder Canyon Project Act, which mandates that each water user have a contract with the Secretary of the Interior (43 U. S. C. § 617d). The United States Supreme Court has held that the Secretary's contract authority is not limited by state laws in choosing the users of the water within each state or settling the terms of the contracts for delivery and use of the water. *Arizona v. California* (1963) 373 U.S. 546, 586. Metropolitan's contract for Colorado River delivery provides that it shares, as a junior priority holder, in California's entitlement. Metropolitan's protest asserted that the State Water Board does not have the authority to re-allocate Colorado River water from senior priority holders to third parties in violation of existing contracts with the Secretary for the use of the water.

In 2002, Metropolitan entered into a Protest Dismissal Agreement with IID, SDCWA, and CVWD based on: (1) the State Water Board designating its order as non-precedential; and (2) the negotiation of a series of interrelated agreements and approvals that comprise the QSA. State Water Board proceedings on new conditions could reopen legal issues of the State Water Board's jurisdiction. Moreover, imposing new conditions that were not contemplated by the parties to the Protest Dismissal Agreement could result in new legal challenges to the validity of Revised Order WRO 2002-0013.

State Water Board should support Fish and Game Code transfers to DWR

Although Metropolitan opposes addition of new conditions by the State Water Board, it would support revisiting an existing condition to assist in implementing an unused element of the QSA. Section 5.2.7 of the Revised Order discusses the reasonableness of requiring IID to provide conserved water to the Salton Sea for a period of 15 years to allow the state and federal governments time to study the feasibility of restoration. The State Water Board expressly reserved continuing authority to consider deleting this measure in light of the results of feasibility studies. IID and SDCWA proposed eliminating the remaining Salton Sea mitigation water condition in their joint petition filed October 11, 2011. However, IID withdrew this petition by letter dated June 13, 2014. The State Water Board should consider revising or eliminating this condition to provide a basis for implementing a legislatively-authorized water purchase that would provide funds for near term Salton Sea restoration projects.

Revised Order WRO 2002-0013 was issued by the State Water Board in the context of contracts and legislation supporting implementation of the QSA. The QSA legislation includes a provision that the conserved water being delivered to the Salton Sea could instead be transferred to the Department of Water Resources (DWR) for purchase by Metropolitan. Fish & Game Code

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section 2081.7(c)(2) and (4). The proceeds of this transaction would be deposited by DWR in the Salton Sea Restoration Fund and provide a source of funding for projects that provide an environmental benefit to the Salton Sea. Both Metropolitan and IID have QSA-related contracts with DWR to implement this legislative direction. Metropolitan is ready to perform under its contract by purchasing any mitigation water acquired by DWR. The State Water Board could assist in implementing the legislation by revising or eliminating the condition that conserved water continue to be delivered to the Salton Sea, and instead support delivery of the conserved water to DWR.

The QSA mitigation conditions should remain separate from Salton Sea restoration

Metropolitan does not take a position on long-term Salton Sea issues unrelated to use of Colorado River water. However, it is necessary to distinguish between the QSA mitigation measures for the Salton Sea and long-term restoration that is unrelated to the QSA. The State Water Board appropriately addressed environmental mitigation measures for the QSA water transfer it was considering in its Revised Order WRO 2002-0013. Mitigation for the impacts of the QSA water transfer was the basis for conditions imposed in the order, and those mitigation measures are being implemented. IID's 2014 petition points out that "all mitigation measures required by the QSA" have been funded through a joint powers authority. (Petition, p. 26.) However, actions related to implementing "a reasonable and sustainable plan" for Salton Sea restoration, as proposed in the Notice, should be addressed in broader forums than the State Water Board.

The legislation adopted to help implement the QSA makes it clear that the Salton Sea restoration effort is to be undertaken by the Natural Resources Agency, acting through the Department of Water Resources and Department of Fish and Wildlife, and subject to appropriations by the Legislature. (Fish and Game Code sections 2081.7, 2081.8, and 2931 through 2933.) It is those state agencies that should handle issues related to wildlife and water quality problems at the Salton Sea. Similarly, enforcement of air quality standards is within the jurisdiction of the Imperial County Air Pollution Control District and South Coast Air Quality Management District and those agencies should review any changes that could impact those areas.

The State Water Board receives annual reports from IID regarding the implementation of the water conservation and mitigation measures in Revised Order WRO 2002-0013. Metropolitan would support the exercise of the State Water Board's reserved authority to reconsider the benefits of continued deliveries of water to temporarily mitigate salinity increases in the Salton Sea. Metropolitan believes that the conserved mitigation water could be better used to generate funds for Salton Sea restoration projects, while simultaneously being put to municipal and domestic use in southern California. Metropolitan opposes new proposed additions to the Revised Order WRO 2002-0013 but suggests that the State Water Board should consider revising or eliminating the existing condition to continue deliveries of conserved water to the

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Salton Sea through 2017. Metropolitan would also be willing to participate in any renewed discussion of Salton Sea restoration efforts led by the Natural Resources Agency if the State determines such a discussion would be timely.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Kightlinger". The signature is written in a cursive, flowing style.

Jeffrey Kightlinger
General Manager