

AJF

BOLD, POLISNER, MADDOW, NELSON & JUDSON

A PROFESSIONAL CORPORATION
500 YGNACIO VALLEY ROAD, SUITE 325
WALNUT CREEK, CALIFORNIA 94596-3840
TELEPHONE (925) 933-7777
TELEFAX (925) 933-7804

FACSIMILE TRANSMISSION COVER SHEET
February 22, 2002

TO:**ANDY FECKO**

Division of Water Rights

STATE WATER RESOURCES CONTROL BOARD

FAX NUMBER:

(916) 341-5400

FROM:Robert B. Maddow *RBM***MATTER:**IID/SDCWA Petition for Approval of Long-Term Conserved Water
Transfer Agreement and Change in Point of Diversion and Place of
Use**Number of pages:**
(including this cover sheet)

4

MESSAGE:

See attached correspondence and Notice of Intent to Appear.
Original of letter, original and three copies of Notice, and "come-
back" copy (plus return envelope) are being mailed to you today.
Copies of letter being faxed to copy recipients today.

If you do not receive all pages, please call Jackie (925) 933-7777 as soon as possible.
This facsimile contains confidential information which may also be privileged. Unless you
are the addressee (or authorized to receive for the addressee), you may not copy, use, or
distribute it. If you have received it in error, please advise Bold, Polisner, Maddow, Nelson,
& Judson immediately by telephone or facsimile and return it promptly by mail.

BOLD, POLISNER, MADDOW, NELSON & JUDSON

A PROFESSIONAL CORPORATION

500 YGNACIO VALLEY ROAD, SUITE 325

WALNUT CREEK, CALIFORNIA 94596-3840

TELEPHONE (925) 933-7777

TELEFAX (925) 933-7604

E-MAIL bpmnj@prodigy.net

OF COUNSEL
JEFFREY D. POLISNER
THOMAS N. STEWART, III
FREDERICK BOLD, JR.
(RETIRED)

ROBERT B. MADDOW
CARL P. A. NELSON
CRAIG L. JUDSON

February 22, 2002

Via Facsimile (916) 341-5400 and Regular Mail

Division of Water Rights
Attention: Andy Fecko
STATE WATER RESOURCES CONTROL BOARD
P. O. Box 2000
Sacramento, California 95812-2000

RE: Imperial Irrigation District and San Diego County Water Authority Petition for Approval of Long-Term Conserved Water Transfer Agreement and Change in Point of Diversion and Place of Use (AIID/SDCWA Petition@)

Dear Mr. Fecko:

This office serves a special counsel to the Coachella Valley Water District (Coachella) in the proceeding concerning the subject Petition. Enclosed please find the original and 3 copies of a Notice of Intent to Appear which is being filed on behalf of Coachella concerning the scheduled hearing on the Petition. I have also enclosed a "come-back" copy of the first page of the letter; please have it stamped to confirm that our filing was timely, and returned to me in the enclosed self-addressed and stamped envelope. A copy of this letter and the enclosed Notice is being faxed to you today.

You will note from the enclosure that Coachella intends to appear only to make a policy statement. As indicated in the Protest Dismissal Agreement (PDA) between Petitioners Imperial Irrigation (IID) District and San Diego County Water Authority (SDCWA), and Protestants Metropolitan Water District (MWD) and Coachella, there is a disagreement among the four parties to the PDA as to the applicability of California law and the role of the SWRCB regarding the Colorado River. One purpose for which the compromises memorialized in the PDA were negotiated and executed was so that the parties' respective legal positions could be preserved, while allowing Coachella and MWD to dismiss their protests to the IID/SDCWA Petition and thereby facilitate expedited action by the SWRCB on the Petition. Coachella's policy statement and the submittal of the PDA to the SWRCB are without prejudice to Coachella's legal position regarding these disputed matters.

Finally, Coachella notes that the Revised Notice of Public Hearing and Amendment to Long-Term Transfer Petition is inconsistent with the Second Amendment to Petition filed by IID and SDCWA in one important respect. As noted in the four parties' January 17, 2002 letter, as

BOLD, POLISNER, MADDOW, NELSON & JUDSON

Andy Fecko
February 22, 2002
Page 2

stated during the Pre-Hearing Conference on January 23, 2002, and as set forth in the Second Amendment itself, the four parties have consistently characterized the movement of water from IID to Coachella and/or MWD of 100,000 acre-feet per annum of conserved water as "acquisition" by Coachella and/or MWD rather than a transfer governed by California law. Coachella and MWD have existing water rights to divert Colorado River water for use within their respective service areas for the purposes for which the acquisition transaction is proposed to take place. The water which IID proposes to conserve will be water that will become available to Coachella and/or MWD through federal water supply contracts with the Secretary of the Interior. Coachella does not contest the authority of the SWRCB to consider the proposed conservation of water by IID, but the acquisition of that conserved water (i.e., the diversion by Coachella and/or MWD of water which is foregone by IID due to its conservation) by Coachella and/or MWD is not properly a matter which is before this Board. Coachella notes that the distinction between transfer and acquisition is acknowledged in Footnote 1 in the Hearing Notice, and respectfully requests that the SWRCB accept the distinction and not characterize the movement of water from IID to Coachella and/or MWD as a transfer.

If there are any questions about any aspect of this letter, please contact the undersigned or Gerry Shoaf, Coachella's General Counsel, at (909) 684-2520.

Respectfully submitted,



Robert B. Maddow

RBM:b

Enclosure

cc (via fax): Arthur G. Baggett, Jr., Chairman and Hearing Officer
Dana Differding, SWRCB Staff Counsel
David Osias (IID)
Scott Slater (SDCWA)
Jeff Kightlinger, Anne Schneider (MWD)

