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October 3, 2005

**VIA ELECTRONIC MAIL AND FEDEX**

Dana Heinrich, Esq.  
State Water Resources Control Board  
P. O. Box 100  
Sacramento, CA 95812

Re: State Water Resources Control Board August 30 Workshop

Dear Ms. Heinrich:

Enclosed is a corrected Statement of Imperial Irrigation District that I request you to replace IID's original submission to the record for the August 30 SWRCB Workshop. For your convenience, the following minor corrections were made:

Page 2, final sentence, delete the word "no" before the words "economic activity," and change "it" to "this following."

Page 5, final sentence of top paragraph, change "restoration" to "mitigation."

Page 7, third paragraph, insert "tentative" between the words "overall" and "conclusion."

Thank you for your cooperation in this matter.

Very truly yours,

/s/ David L. Osias

David L. Osias

DLO:cs

Enclosure

cc: Attached Service List

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**IID/SDCWA AND PUBLIC WORKSHOP SERVICE LIST**

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Written Comments Should Be Addressed To:  
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**CORRECTED**

STATE WATER RESOURCES CONTROL BOARD PUBLIC WORKSHOP

AUGUST 30, 2005

STATEMENT OF IMPERIAL IRRIGATION DISTRICT

The Imperial Irrigation District (IID) appreciates the opportunity to present its views at this workshop. IID will give the Board a status report relevant to the discussion of fallowing and socioeconomic impacts, a brief reminder of the background that caused fallowing to be part of this deal, and then focus its comments on the socioeconomic impacts to date and disagreements that have arisen regarding them.

The evidentiary hearing on the water transfer concluded about two years ago. There was then a series of closing briefs, arguments, reconsiderations, and the record was ultimately concluded in December 2002. The water transfer agreements were all finally signed in October 2003. In that intervening timeframe, settlement with the United States was worked out, as well as settlement with other parties. The negotiations which took place at the same time as this Board's proceeding that allowed fallowing into the deal were led by Former Speaker Hertzberg and were consummated in writing. IID started delivering water in calendar year 2003.

After the agreements were signed, litigation arose challenging the Board's decision. The current status of that litigation is that the claims against the State Board and other defendants regarding the Board's decision were dismissed by the Superior Court. A writ was sought, and an order to review that writ was issued by the Appellate Court. The case is stayed while the Appellate Court deliberates. No hearing is yet scheduled on the writ. Other litigation related to the transfers was also filed. Those actions were coordinated in the Sacramento Superior Court and are also stayed.

While the litigation has been pending, IID has been transferring water and undertaking environmental mitigation. In 2003, IID created for transfer to San Diego 3,445 acre-feet of conserved water. IID transferred 10,000 acre-feet as required. IID utilized the inadvertent overrun program to make up the difference. IID then instituted fallowing in the following year to pay that back. That was forgiven by the Bureau of Reclamation in connection with other proceedings, so IID applied it to other obligations.

In 2004, IID transferred 20,000 acre-feet to San Diego created by fallowing. IID also created 15,000 acre-feet by fallowing that IID delivered to the Salton Sea as part of the mitigation for the transfer. It is important for this Board to put into context that IID, in addition to its contract with San Diego, has contracts with other parties in connection with the Quantification Settlement Agreement, including the United States, Coachella Valley Water District and The Metropolitan Water District of Southern California. Pursuant to its contracts with the United States, and pursuant to a settlement with the United States, IID has agreed to pay back a certain volume of water to the Colorado River relating to California's use in the aggregate from 2001 and 2002. There is a payment schedule for that payback and IID is creating that payback water also by fallowing.

It is important that when people discuss the impacts of fallowing they understand that the contract obligation of IID and San Diego for mitigation relates only to impacts caused by fallowing for purposes of transfer to San Diego or Salton Sea mitigation. It does not relate to impacts caused by the agreement to deliver water back to the Colorado River for earlier years. And in part, because the payback water was not the subject of the IID or San Diego deal, and there was economic activity created from that higher volume of water used in those earlier years, the impacts of this fallowing are being offset by that earlier activity.

For an eight-year period, IID has agreed to leave 18,900 acre-feet per year in the Colorado River. It also has the right to accelerate so that it can potentially create water early, rather than doing such in later years. IID has, in fact, been paying that amount off at a faster rate than scheduled. It delivered 25,881 acre-feet in 2004 instead of 18,900--about 7,000 acre-feet of additional water. IID expects to do more in 2005 because conditions are conducive due to adequate sign-ups for fallowing, and also because of the level of the River and issues regarding shortage.

IID has been filing with the Board each March a report on the water transfer, reporting on the previous calendar year. In March 2004 a report was filed covering calendar year 2003. In March 2005 a report was filed covering calendar year 2004. (See Exhibits A and B attached hereto.) The reports include water-transfer data not only with respect to San Diego, but with respect to the River and other parties, even though not the subject of the decision. IID includes the additional information in its report so the Board will have a full picture.

In addition, IID produces an annual water transfer report which covers not only the QSA transfers, but the old MWD/IID transfer. It will also cover the AAC lining transfer once it is underway. IID also produces annually a financial report which reflects both costs, revenues and expenditures related to all these transfers. (See Exhibit C attached hereto.)

Fallowing was not originally part of the petition or the transfer request submitted to this Board. Fallowing became a topic before this Board in connection with the environmental review that was done for the conserved water transfer. As a result of a comprehensive environmental review, the draft EIR and ultimately the final EIR revealed that the potential negative impacts of efficiency conservation by reducing inflow to the Salton Sea were greater than if transfers were

done by fallowing, and thereby reducing the impact on the Salton Sea. This Board's order therefore reflects an accommodation for that, as does the deal as implemented.

There was a schedule for how much fallowing for transfer and how much fallowing for the Sea would be required to mitigate the transfer. That schedule is in the annual reports. But socioeconomic impacts can be reduced and then eliminated if fallowing can cease. The IID reminds the Board that the only reason fallowing was included in the deal to begin with was to lessen impacts on the Salton Sea while efforts to preserve, restore and mitigate the Sea were underway.

The Board knows that if the Salton Sea restoration and the preferred alternatives selected by DWR by the end of 2006 can accommodate a restoration habitat preservation plan that does not require the same volume of inflow to mitigate the transfer and the fallowed water can then become efficiency-created water and, rather than going to the Sea, can be sold by DWR to The Metropolitan Water District for \$250 an acre-foot above what they would pay IID for it (zero), such money can be used to finance Sea restoration.

IID encourages the Board to encourage the DWR to select a preferred alternative by 2006, and to influence a method that would accommodate reduced inflows to the Sea so that the fallowed water can help finance the restoration. The fallowing period of 15 years would then be reduced, if one assumed the selection of a preferred alternative at the end of 2006 and an implementation plan for two more years that ended in 2008. This would only be six or seven years into the transfer and the fallowing period would be reduced by half. However, the volumes of fallowed water in the first half of the transfer are closer to 30% of the total volumes, and thus it is very



back-weighted in volumes. There is a tremendous following socioeconomic impact benefit by elimination of fallowing for Salton Sea mitigation.

The original contract between IID and San Diego called for efficiency conservation. When the switch to fallowing was made, three or four major concessions occurred. First, IID waived a price premium related to shortages for 15 years. That is, under the contract, the price would increase anywhere from 5 to 100 percent in the event of certain defined shortages (in northern California, Colorado River, or otherwise). IID waived that because of the fallowing period. Second, IID agreed to contribute \$20 million to socioeconomic mitigation from transfer revenues. Third, San Diego agreed to pay socioeconomic mitigation for everything above \$20 million. The \$20 million is funded in two ways. First, San Diego advances \$10 million; then IID advances \$10 million; then IID repays San Diego \$10 million.

The contract defines very specifically, with great detail as a result of economists participating in negotiations, what impacts are to be measured; how those impacts are to be measured; and when those impacts are to be measured. The contract also contains a dispute resolution process where if there is disagreement between IID and San Diego over the meaning of the contract or the implementation of the contract, there is first an Administrative Committee meeting among representatives to see if they can resolve their disputes. If that does not work, then a dispute panel, which is a larger group from each of the agencies, meets. If that does not work, then there is binding arbitration. The dispute resolution process and the contract do not provide for either party to cancel the contract in the event that they're unhappy with the outcome of the arbitration.

The dispute mechanism has in fact been triggered, and IID and San Diego are engaged in the Administrative Committee meetings. IID believes progress has been made and is cautiously

optimistic that there will be no need to go beyond this first step of the dispute process. It is important to know, however, that there is a mechanism for solving disputes even if through third-party binding arbitration.

The disputes between IID and San Diego have erupted in part because of the work of the three-economist panel, which is charged with implementing, as the contract requires, the measurement of the impacts. The panel does not decide how to mitigate them; does not select what should be chosen to mitigate; nor does the panel have any role in deciding how IID should spend its money, or should have spent its money. It only looks at what was done.

The panel has provided two reports (see Exhibits D and E attached hereto). The first report was approved by two panel members and rejected by one member; and the second report had only two economists participate because the third had disagreed with the conclusions of the first report. The dispute among the panelists and with IID involves three major problems with the reports. IID believes the problems are so material that the reports are not credible, provide no basis for assessing what actually has happened, and need to be redone. Included in Exhibit D is Dr. Kubota's memorandum in which he noted his disagreement with the panel.

IID believes the problems fall into these three areas. First, by agreement, the panel was supposed to do things that it failed to do; thus, the impacts cannot be measured until the panel performs as the agreement requires. The panel did not follow the procedures; the panel did not look only at impacts attributable to fallowing as compared to impacts attributable to other things.

Second, the panel speculated on what could have been done with money rather than measuring what was, in fact, done with money. IID contends that is not relevant to the actual assessment.

Third, the panel had bad data: wrong volumes of water being involved in the wrong years;

wrong dates for payment; wrong amounts of payments; wrong uses of the funds. IID also believes the panel made errors with respect to farm budgets. In some places the panel used gross impacts instead of net impacts. In others, it utilized the negative impacts caused by the fallowing for San Diego and the Salton Sea, but then used the revenue paid to farmers for all the fallowing, including water left in the River.

In order to better illustrate these errors IID has asked Dr. Rodney T. Smith to redo the reports for 2003 and 2004 in a way that would illustrate what should have been done. Dr. Smith is preparing his reports so that one can see where he got data and why he used the data, unlike those of the panelists where no work papers are available. The methodology used by Dr. Smith is consistent with the contract. IID expects Dr. Smith's report to be completed soon. With the Board's permission, IID will submit that report as part of this statement under separate cover when it becomes available.

Dr. Smith's overall tentative conclusion for 2003 and 2004 is that the aggregate impact for 2003 and 2004 is \$1.21 million of negative impact in the Valley as a result of that fallowing. That breaks down to about \$64,000 positive in 2003, for which we had a very small volume of water, and \$1.28 million negative impact in 2004. If you use the full year of 2004 as an example, if impacts grow as volumes grow, and you assumed a straight line, the \$20 million number, which again is what IID is funding although San Diego is advancing \$10 million of it and IID is repaying them, that threshold is crossed somewhere between 2008 and 2009.

IID also comments on the relationship between the funding source, which is IID and San Diego, and the mitigation selection decision-making process, which is through an entity called the "Local Entity." The Local Entity is an 11-member group containing two representatives of the

IID Board, two from the County of Imperial Board, two from the Imperial Valley Association of Governments, one representative of the Chamber of Commerce, one from agriculture, one from agricultural labor, and two at-large. They are charged by the contract with deciding how to spend money to mitigate the impacts. Their goal is to eliminate the impacts by their expenditure choices. As a progress report, they have had significant debates on what to do and how much it should cost, and how much stimulus it will create to offset impacts. Socioeconomic mitigation is defined by the contract as an after-tax impact. If you handed a dollar to someone to mitigate for a dollar of impact, and the someone had to pay taxes of 20 cents, then they only got 80 cents of mitigation under the contract. You would have to pay them \$1.20 roughly to offset the dollar impact. On the other hand, if you could fund a program for 80 cents that eliminated a dollar of impacts, then you would not have to pay the full dollar. Therefore, the mitigation decision--the method of mitigation--is what determines the level of contribution. The impact measurement is what defines the problem that needs to be solved. The payment obligation is to pay for the mitigation to eliminate the impact amount. It could be more or it could be less; it could be a lot more or a lot less or very close.

IID believes the State Board need not reopen its decision. IID does encourage the Board to be in contact with DWR to provide timely encouragement for the Salton Sea restoration alternative being selected. To the extent DWR can help the Legislature to fund that alternative and to be prepared to entertain suggestions from IID and others for allowing IID to eliminate the following, IID believes such would go a long way to eliminating the magnitude of any socioeconomic impact dispute.