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Protestant

State Water Resources Control Board

Petition of Imperial Irrigation District and  
San Diego County Water Authority for  
approval of long-term transfer of conserved  
water under permit 76433 Application No.  
7482

**Brief of Protestant William I. DuBois as to the petition July 11, 2002**

1 The water use systems served by the All-American Canal at the lower end of the  
2 Colorado River accommodate Bard, Indian reservations, part of Arizona, a hydro  
3 generation station at Pilot Knob, the Imperial Irrigation District (IID) and Coachella Valley  
4 Water District (CVWD). CVWD and IID run farm drainage water and urban wastewater  
5 into the Salton Sea. Farm irrigation drainage water is the predominant source of water  
6 which maintains the Salton Sea. The Sea has become a convenient habitat for some  
7 species of fish and many species of birds.  
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10 In 1984, the State Water Resources Control Board (SWRCB) determined, based upon  
11 information furnished by the California Department of Water Resources (CDWR) that it  
12 was not reasonable for IID to drain that much water into the Salton Sea, and ordered IID  
13 to improve its system efficiency so that others could use much of the water which was  
14 then draining into the Sea. IID complied initially by agreeing with MWD to salvage, at  
15 MWD's expense, about 100,000 acre-feet a year. Farmers couldn't afford to pay for all  
16 that canal lining and system holding ponds, which, when built at MWD expense, saved  
17 much of the water from running off, thus assisting farmers in improving their own water  
18 application efficiency.

19 Because CDWR had reported that it was reasonable to reduce farm runoff to a greater  
20 extent, the SWRCB requested more water efficiency by the IID. IID then made an  
21 agreement with SDCWA for them to buy from IID that salvage water which would be  
22 made available by IID. Subsequent agreements increased and reassigned parts of the  
23 volume of the agreement to cover transfer of up to 300,000 AF of water to SDCWA,  
24 Metropolitan Water District (MWD) and CVWD. The EIR/S shows that when IID and  
25 farmers reduce their field surface runoff into Salton Sea in order furnish transfer water, the  
26 Sea will diminish in size and more rapidly become more saline than fish can tolerate, thus  
27 harming both the fish and the birds that depend on the fish for food.  
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2 The authors of the EIR/S, required to come up with a proposed alternate method of  
3 reducing IID's water consumption, but still maintain Salton Sea as a fish and bird habitat,  
4 proposed that 80,000 acres of farmland in IID be fallowed. The surface evaporation of the  
5 Sea would thus be balanced with water charged to the account of IID but not used for  
6 irrigation, but instead be used for delivery to the Sea. This plan is called HCP2.

7 This proposed alternative is apparently being supported by the governor, at least one U.  
8 S. Senator, five "public interest" organizations often classified as environmentalist, a  
9 regional water quality control board executive officer, the Salton Sea Authority and now  
10 apparently even by the SDCWA. To the consternation of many of those of us at risk, the  
11 Department of the Interior and the Bureau of Reclamation have expressed that we must  
12 treat the Salton Sea as a separate matter, and not let these concerns cloud the transfer.  
13 However, no competent court, legislative or executive body has ruled that IID won't be  
14 held liable if Salton Sea values are lost when we reduce our field surface runoff to Salton  
15 Sea. Thus, we can only envision approval of this proposed transfer as resulting in large  
16 scale farm fallowing in IID, as prescribed in HCP2.

17 The whole matter has become enigmatic. The people of Imperial County know that  
18 fallowing land simply decreases the economy, making many now-marginal services  
19 unavailable in the future. The Salton Sea cannot be maintained as a fishery on a long-  
20 term basis anyway, any more than Mono Lake or Great Salt Lake could be restored as a  
21 fishery. No local government would even try to do this, nor would the State of California  
22 even in good financial times; and the federal government is only better off financially  
23 because they can raise more taxes from more people than can the state. The wisdom of  
24 such an undertaking is not measurably different for any of these political bodies. None  
25 has shown any enthusiasm for "saving Salton Sea" except for policy expressions.

26 The problem is not one which can justly or effectively be placed on IID's shoulders. IID  
27 has shown itself willing to generate the water for the transfer by compensated  
28 improvements and on-farm water application improvements. Both are very costly and

1 beyond the means of farmers, but the methods can provide salvage water that is  
2 affordable for municipal purposes. Other governments and judiciary systems must  
3 absolve IID of responsibility for what happens to Salton Sea, if they want the water to go  
4 to the south coast instead of Salton Sea.

5 If the SWRCB makes a decision to approve the transfer under this EIR, IID would be  
6 forced to fallow productive farmland in order to serve the Salton Sea. That would be a  
7 use of the water, which by D-1600, was determined to be a misuse of water even while  
8 the land was being farmed and only the farm runoff went to the Sea.

9 This issue is not ripe for a decision by the Board. As was requested in my opening  
10 statement, the Board should recess the hearings until the Board has a complete logical  
11 proposal placed before it. This is essentially one of the arguments made by County of  
12 Imperial in its brief.

13  
14 It makes no sense for the water to be taken away from a desert region which has no other  
15 feasible source of water to develop, and which can and is increasing its economy and  
16 population, in order to make it less expensive for a coastal region which wants its  
17 economy and population to grow faster than its present water supply can allow, and does  
18 have other sources. Unless that coastal region is willing to, and does, make whole the  
19 desert region's inhabitants and mitigate its environmental losses, the present transfer  
20 agreement and application should be allowed to expire, without prejudice.

21 If the Board feels it must make a decision, that decision must be conditioned on reducing  
22 the time span of its effectiveness to a period ending in 30 years to coincide with the MWD-  
23 SDCWA Exchange Agreement, and the amount of the transfer limited to 100,000 acre-  
24 feet a year, which can be salvaged by IID system improvements. The effect of the system  
25 improvements will have little effect on the Salton Sea supply for many years. Attesting to  
26 that fact is the testimony of IID witnesses that the MWD-IID system improvements, which  
27 conserved over 108,000 AF annually, have not yet affected the Salton Sea supply,  
28 although these improvements have been in use for several years.

1 IID has already “gone the extra mile” offering to give more than its share in order to do  
2 everything reasonable to comply with D1600 and order 88-20 by:

- 3 1. offering to risk its own borrowed capital to generate water for transfer, and
- 4
- 5 2. offering to accept remuneration which is much below cost of generation for part of
- 6 the water to go to CVWD.
- 7

8 Some of IID’s transfer protestants (the chickens) want to invite IID farmers to a breakfast  
9 of ham and eggs with IID playing the part of the pigs and furnishing the ham (the water it  
10 must have for farming).

11 Insufficient recognition has been given to the fact that although IID has a good water right,  
12 it has no right to dedicate water for environmental purposes, but only for domestic and  
13 irrigation purposes. Although Salton Sea serves an agricultural purpose, that purpose is  
14 as a depository of irrigation runoff and drainage. Salton Sea’s designated purpose and  
15 IID’s water right would both be violated if part of IID’s Colorado River Supply is instead  
16 devoted to maintaining fish and wildlife and other strictly environmental purposes by being  
17 devoted to maintain the Sea.  
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20 Having been afforded the opportunity to review the brief of Larry Gilbert, I wish to state  
21 that I concur with the views expressed by him in his brief.  
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24 Contemplating all the complications involved in this water transfer application before the  
25 Board, it is clear that the transfer, if completed as dictated by the FEIR/EIS, would in  
26 essence, amount to a very simple operation:  
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1. SDCWA gets water that now feeds Salton Sea.
2. IID (farmers and landowners) are compensated for reducing IID's withdrawals at Imperial Dam.
3. Salton Sea feed water stream is reduced to consist of only IID's tile line effluent plus Mexicali waste stream and CVWD wastewater.
4. Some group, or combination of groups, are held responsible for damaging endangered and/or threatened species at Salton Sea.
5. The cheapest source of water (fewest number of voters per acre-foot of water) is IID. IID agriculture shrinks by about 85000 acres (1/5 to 1/6 of IID's billion dollar a year contribution to supplying year long crops to society).
6. Somebody cries "Foul" to the courts, citing Water Code section 106:

"It is hereby declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation . . . ."

I share many other concerns which are recited in Mr. Gilbert's and also the points recited in Mr. Rossmann's Imperial County brief.

Dated: July 11, 2000

Respectfully submitted,

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William I. DuBois