

Policy Statement of Michael Cohen  
on the  
Joint Petition of IID and SDCWA for Approval of a Long-Term Transfer  
of Conserved Water, etc., under Permit No. 7643 (Application 7482)  
April 22, 2002 Holtville, California

Thank you for the opportunity to submit this policy statement on the proposed transfer of water from the Imperial Valley to the San Diego metropolitan area, and for holding this policy hearing here in the Imperial Valley.

My name is Michael Cohen. I am a Senior Associate with the Pacific Institute for Studies in Development, Environment, and Security. With the Pacific Institute, I have been actively engaged in efforts to improve the ecological health of the Salton Sea for more than four years. I am the lead author of the Institute's 1999 report entitled: *Haven or Hazard: The Ecology and Future of the Salton Sea*, and in October of last year wrote the Institute's "Proposal to Preserve and Enhance Habitat at the Salton Sea" (attached), as well as the Institute's comments on the Salton Sea Restoration Project draft EIR, and the IID Water Conservation and Transfer Project/draft Habitat Conservation Plan draft EIR/EIS (hereinafter, "DEIR").

The Pacific Institute recognizes the need for the proposed water transfer and supports the general objective of reducing California's reliance on surplus Colorado River water. In the long run, reducing California's reliance on such surplus water can free up Colorado River water for meeting environmental needs, among other uses. However, reallocation efforts must be implemented in such a way as to minimize environmental and socio-economic impacts. As currently structured, the proposed water transfer would have significant, unreasonable impacts on environmental and human health.

**I predict that, at the end of the hearing period, the State Board will find itself in a very difficult position. On the one hand, the proposed water transfer is a critical element – a "condition precedent" – of the Quantification Settlement Act (QSA) and the California Colorado River Water Use Plan. The Interim Surplus Guidelines of January 2001 appear to be contingent upon the execution of the QSA by the end of this year.<sup>1</sup> These surplus guidelines provide a ready, predictable supply of "surplus" Colorado River water to California over the next 15 years, to facilitate California's efforts to reduce its dependence on the river in normal years. If the proposed water transfer is not approved, the QSA as currently drafted would collapse. Since the Colorado River basin is experiencing its third straight year of drought and reservoir storage has decreased roughly 10 million acre-feet (MAF) from this date two years ago, it is quite unlikely that the other basin states would be willing to release additional Colorado River water to California absent real progress in implementing the QSA. The loss of potentially more than 0.7**

<sup>1</sup> The Interim Surplus Guidelines Record of Decision Section 5(B) actually reads:

In the event that the California contractors and the Secretary have not executed [the QSA and its related documents] by December 31, 2002, the interim surplus determinations under Section 2(B)(1) and 2(B)(2) of these Guidelines will be suspended and will instead be based upon the 70R Strategy, for either the remainder of the period identified in Section 4(A) *or until such time as California completes all required actions and complies with reductions in water use* reflected in Section 5(C) of these Guidelines, whichever occurs first. (emphasis added).

Note that "all required actions" are not defined. California could readily meet the 2003 benchmark in Section 5(C) with existing programs, suggesting that the December 31 deadline for approval may not be as binding as suggested by the parties.

MAF of Colorado River water would plunge the entire state into uncertainty, as MWD scrambled to contract for water to make up the shortfall.

On the other hand, the water transfer will very clearly have significant and unreasonable impacts on fish, wildlife, and other beneficial uses of water. These impacts include the greatly accelerated demise of the Salton Sea's fishery. Without the transfer and related impacts, the Sea could support fish for as much as another fifty years. With the proposed transfer and the actions that this would trigger, that time period could be *reduced* by forty years (and not the eleven years reported by the DEIR). More than 100 million fish are estimated to live in the Salton Sea, making it one of the most abundant fisheries in the world. This fishery supports tens of thousands of fish-eating birds, including large populations of special status species such as the white pelican, the brown pelican, and the black skimmer. The loss of this fishery, especially in light of the loss of more than 90% of California's pre-settlement wetlands, would have significant impacts on these birds. The fishery also supports large numbers of human anglers, both locals and tourists, contributing to the local economy. A broader range of the transfer's significant and unreasonable impacts are described within the DEIR itself, as well as by the Pacific Institute's comments on the DEIR (attached), and will be described in detail in much of the testimony and exhibits presented in Phase 2 of this hearing.

Regrettably, IID has done little to make the State Board's decision any easier. Despite a variety of options available to it, as mitigation for the impacts to biological resources IID chose two ill-defined and infeasible "approaches." In the first, it begs the public's indulgence and credulity to believe that constructing a fish hatchery and 5,000 acres of feeding ponds would somehow mitigate for the loss of 240,000 acres of Salton Sea. The second approach – generating the transferred water by fallowing rather than by actual conservation – might well be seen as a willful rejection of the State Board's own findings in Decision 1600 and Order 88-20. Neither approach reflects a good faith effort to address the dramatic environmental impacts of the water transfer.

Nor has SDCWA made a good faith effort to address the potentially significant and unreasonable impacts to fish and wildlife within its service area. The parties to the water transfer fail to acknowledge that, under SB 221, the water transfer would have a demonstrable growth-inducing impact within the SDCWA service area, by providing an assured, reliable supply of water. This reliability would permit SDCWA's member agencies to approve large new developments. Much of the SDCWA service area has been designated as one of the six greatest hotspots for imperiled species in the U.S., supporting at least 138 endemic species and 158 imperiled species. Habitat loss and fragmentation, due to residential and urban development, is a principal cause of species endangerment.

In response to repeated requests from me and several organizations in San Diego since July of last year, SDCWA offered to host a workshop to explore the question of the transfer's potential growth-inducing impacts and methods to minimize such impacts. Yet this workshop has never materialized, an indication of SDCWA's lack of consultation with other stakeholders, and their failure to acknowledge and address the potential impacts within its own service area.

Further evidence of the parties' lack of good faith has been their efforts, at both the state and federal level, to exempt the water transfer from environmental laws. For example, the parties drafted HR 2764, which if enacted would require the Secretary of the Interior to accept IID's inadequate HCP and issue incidental take permits and all other approvals required by the Endangered Species Act, and additionally would arbitrarily limit judicial and administrative review. Rather than working with stakeholders to identify workable, mutually agreeable solutions, the parties have repeatedly sought to change the rules of the game, invoking apocalyptic language and minimizing the tremendous ecological values offered by the very resources that their transfer would irrevocably alter.

The transfer parties have made no real effort to address the environmental impacts of the transfer. IID and SDCWA executed their Transfer Agreement in 1998, yet in the years since have failed to devise a plan to address the transfer's obvious environmental impacts. They waited for a joint federal/state Salton Sea Restoration Project to shield them from any responsibility. Then, when that failed – partly because it became readily apparent that no full-scale restoration project was feasible in the context of the water transfer – they turned to the legislature for a legal exemption. IID's HCP is so obviously inadequate as to suggest a willful flouting of CEQA, NEPA, and state and federal endangered species laws. Indeed, the parties' behavior could be seen as a kind of brinksmanship, daring the State of California to disapprove the transfer and suffer the loss of hundreds of thousands of acre-feet of Colorado River water.

This is not behavior that should be rewarded. Approving the transfer as currently described would establish a terrible precedent. California voters have made very clear their support for strong environmental protections and the preservation of ecological resources. The Salton Sea is no different, and should not be sacrificed at the altar of political expediency. The transfer parties have had years to develop a reasonable solution; instead, they have waited until the last minute to seek approval for a deal made behind closed doors, a deal that ignored environmental impacts and the interests of a broad range of stakeholders.

But simply denying the proposed transfer is not an acceptable option either, given the potential for dramatically reducing California's supply of Colorado River water. Instead, I encourage the State Board to issue a temporary, conditional approval of the transfer.

~~This temporary, conditional approval would be contingent upon the parties' enforceable commitment to implement the following elements:~~

- To minimize environmental impacts, the water transferred during the period of approval could only be generated by the voluntary, temporary fallowing of land. Such temporary fallowing would limit impacts to the Salton Sea, while addressing farmers' needs for financial predictability. In the initial years of the transfer, as the volume of transferred water ramps up, the amount of land needed to generate the water would be smaller than at peak periods, reducing socio-economic impacts.
- A plan to invest an appropriate percentage of the transfer revenues into a community development fund, to mitigate for the socio-economic impacts at the area of origin.
- A plan to identify and address the growth-inducing impacts of the transfer at the point of delivery, with broad-based community participation.

- A plan to reduce the concentration of selenium in drainage waters, by one or more of: wetland management programs, targeted efforts at disproportionately high sources of selenium within the Imperial Valley, and/or support for Upper Colorado River Basin selenium source reduction programs..
- The development and implementation of a long-term habitat preservation and dust abatement plan for the Salton Sea, generated in consultation with a broad range of stakeholders and overseen by the Salton Sea Science Office.

The State Board's temporary, conditional approval would expire on December 31, 2007. If by that date each of the above elements were implemented satisfactorily, the State Board would grant an unconditional approval of the proposed action. Such a temporary, conditional approval would minimize the environmental impacts of the transfer, by providing for a method that would have limited impact on inflows to the Salton Sea and by denying the long-term supply reliability required to approve large new developments. Additionally, the five-year interim period would afford a reasonable amount of time to develop a long-term habitat preservation and dust abatement plan for the Salton Sea. By making final approval of the transfer contingent upon the implementation of such a plan, the transfer parties would be encouraged to direct their efforts toward securing the authorization and appropriations necessary. This approach would enable California to meet the terms of the Interim Surplus Guidelines, while affording time to develop reasonable mitigation.