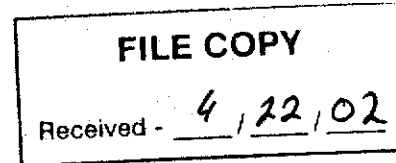


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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

JOINT PETITION OF IMPERIAL)
IRRIGATION DISTRICT AND SAN DIEGO)
WATER AUTHORITY FOR APPROVAL OF)
LONG-TERM TRANSFER OF CONSERVED)
WATER, ETC. UNDER PERMIT NO. 7643)
(APPLICATION NO. 7482)

POLICY STATEMENT OF HANK KUIPER, CHAIR
IMPERIAL COUNTY BOARD OF SUPERVISORS

Holtville, California, April 22, 2002

and

OPENING STATEMENT OF THE COUNTY OF IMPERIAL

To the Hearing Officer, Members, and Staff of the State Water Resources Control Board; Imperial County Inhabitants; and Other Participants in this Proceeding:

INTRODUCTION

On behalf of all citizens and residents of Imperial County, let me welcome you to our County for the opening today of your formal proceedings on the proposed IID-San Diego long-term water transfer. We in Imperial County are grateful that you have honored our request and that of other Imperial County participants to conduct this policy hearing here today. We appreciate your effort to travel to our relatively remote county, and spare those farmers, urban dwellers, and outdoor enthusiasts from whom you will hear today the greater effort it would require them to travel to Sacramento. We also hope that by being here for even one day you will take away an appreciation of the vibrant economy and environment that we are working to preserve.

Imperial County recognizes foremost that it is part of California -- both legally and politically. We appreciate the great challenge facing our State to bring its use of Colorado River water to within the budget decreed by Congress and the Supreme Court. We are not responsible for the State's exceeding that budget in the years since the labor and industry of Imperial County pioneers conceived and

established here one of the world's greatest agricultural producing areas. But we are willing to collaborate with other units of federal, state, and local government to help solve the problem, recognizing as one Court of Appeal Justice wrote many years ago that in matters of water Californians must share the burdens together.

Together we need to find a solution that works for California, a solution that also works for Imperial County. I will shortly describe our County's unique interest and role in this proceeding. Beyond our participation here and in the coming weeks in Sacramento, know that we have and will continue to devote special efforts to work with our local water agency, the Imperial Irrigation District. We are mindful of the important role that IID plays in the history and use of water in California. In that respect we are a proud parent, because we know that it was the elected leaders of Imperial County's government who took the initiative to create the Imperial Irrigation District and seek changes to the Irrigation District Act that would enable IID to succeed in its bold ventures. We have looked and will continue to look to IID not only as our fully-grown offspring, but more importantly as our collaborator and lead agency with authority to refine its water transfer proposal before it comes before your Board for final State approval.

INTERESTS OF THE COUNTY OF IMPERIAL

Imperial County has a unique role in this proceeding. We represent the government of general jurisdiction embracing all of Imperial Valley's inhabitants, its agriculture, its urban development, and its unique natural resources of the Colorado River and Salton Sea. Our elected Board of Supervisors represents *all* of the interests that your Board must consider arising in the area from which the water transfer originates. We are charged to protect them all and not elevate one to the disregard of the others. In a certain sense, we have the most at stake in these hearings, because of the breadth of our interests, coupled with the fact that as a proprietary matter we are nominal outsiders to the water transfer and have not to date participated in its formulation. While we are working with the principals to the transfer, in the end we rely on your Board to protect the breadth of public interests that we represent.

In an economic sense, Imperial County represents an agricultural economy that is valued in excess of one billion dollars annually, and that produces an annual tax roll to the County and its school and other local districts of \$ 10,000,000 and annual sales tax revenues of \$47,000,000. More than 11,000 of our inhabitants are engaged in this industry that produces a great share of our Nation's annual crop of lettuce, carrots, wheat, asparagus, and melons. This important resource is also a vulnerable one; depending on agricultural markets and natural conditions, our

unemployment rate can exceed 25 per cent -- more than any other county in California. Before this valley enters into a long-term transfer of water away from this economy, we must be certain that we have comprehended the impacts and found ways to ensure that our agriculture continues to thrive.

Our economic interests also include those of recreation. Income to Imperial County from Salton Sea recreation exceeds millions of dollars annually. That economy would evaporate in dollar terms in direct proportion to the evaporation of the Salton Sea into a lifeless world, or worse, a nuisance. As with agriculture, at the Salton Sea we must be certain that we have comprehended the impacts and found ways to ensure that the sea continues to survive.

As a County we are uniquely situated with respect to the Colorado River. While this Board may be used to thinking of "counties of origin" as those in the Sierra foothills that give rise to the great rivers of the north, we are quite literally the county of origin for most of California's Colorado River resource. Like those northern counties of origin, we have no other source of water than that which is provided by the Colorado on our eastern border. In a more specific category, we are also the county of origin of the proposed water transfer. We are grateful that state law and the model water transfer code recognize and protect the County's unique interests -- knowing that all of us in this proceeding must ensure that the

ultimate Imperial-San Diego agreement becomes literally a "model water transfer."

IMPERIAL COUNTY'S AREAS OF CONCERN

Those who have read our written testimony and environmental commentary to date know our concerns: the viability of our agriculture; the future needs of our urban economy; the health of the Salton Sea and the rest of the County's environment; and above all, the still-unfulfilled need to define and enforce mitigation measures that meet all our needs, beyond those confined to the individual farmer.

In agriculture, we are concerned that even as this Board is being asked to evaluate the Imperial-San Diego transfer, that program and its impacts are not fixed. We are told that the transfer could be accomplished with no permanent fallowing or tens of thousands of acres of fallowing representing in excess of 300,000 acre-feet-annually. This year virtually each month has brought a new proposal from or to our constituents on whether and how fallowing should be addressed, but no resolution. We are told that the transfer is desirable because it relies on "willing buyer willing sellers" -- and yet that is exactly what Los Angeles told the farmers of the Owens Valley in the 1920s, which resulted in total and ultimately unnecessary destruction of agriculture there.

In the urban sector, we see the need to combat our high unemployment with a diversified economy, as more people are attracted to our County and its uncrowded lifestyle. We need to ensure that during and after a long-term water transfer, sufficient water is reserved for our own reasonable and foreseeable future needs. With our population expected to double by 2020, we visualize a need for 120,000 acre-feet-annually for our domestic needs by that time.

At the Salton Sea, we obviously identify both an economic, and scenic and recreational resource. Those qualities deserve protection. But even more fundamentally, we cannot allow the Salton Sea to become a nuisance that threatens the very health of our people and livability of our County. Our air quality experts tell us that without foresight the Salton Sea could become another Owens Lake, but unlike Owens Lake we cannot afford to wait more than three-fourths of a century to abate a nuisance once created. We also fear adverse air quality from fallowed fields.

Finally, even as we assess these concerns under the labels of environmental and economic impact, we need to define, establish, and enforce mitigation measures to confine and offset those impacts. We are grateful that the draft impact statements prepared by the Bureau of Reclamation and IID recognize and attempt to quantify those impacts. Our newly-engaged experts are attempting to validate or refine those assessments. But to fulfill the mandates of State law we

must finish the job that the EISes and EIRs do not do: we must identify the recipients of compensation for so called "third-party impacts," and ensure that the proper beneficiaries of the transfer -- and these we view as a combination of San Diego consumers in particular and the people of the United States and California in general -- provide this compensation.

PROTECTIONS NEEDED FROM THE STATE WATER BOARD

All our interests and concerns lie within this Board's jurisdiction. Even though the Board staff earlier may have treated some of our interests as not those of a "legal user of water" and therefore outside your purview, we will show that they are not outside. No new law needs to be enacted for this Board to protect the County of Imperial. Article X, section 2 of the Constitution, and sections 100 and 275 of the Water Code, unite phases I and II of this proceeding, and give Imperial as the county of transfer origin standing to protect all our interests, even though many of our concerns address so-called "third party impacts." We expect to present our principal case in phase II, "public trust and wildlife values," but also participate if necessary to question or support claims made in phase I, "water rights" issues. We respect and will honor the Board's division of labor into these phases for the convenience of the parties, but in the end the two phases cannot be isolated from each other.

For example, the Board's duty to enforce reasonable use can protect the County's interests in a healthy Salton Sea. In the mirror image of the facts that framed this Board's prior determinations in Decision 1600, the reality today is not too much water going into the Salton Sea, but not enough. Just as the courts found long ago with respect to Mono Lake, it is both reasonable and beneficial to maintain flows into the Sea that protect economies and environments that depend on that flow. In our view, any water use or practice that produces any unnecessary environmental or economic harm -- not just to public trust resources -- can and must be found unreasonable.

Beyond the enforcement of reasonable use, the Board's duty to protect public trust values can also protect the County of Imperial. While the question is a vexing one, in the end we do not see the Salton Sea as an artificial body of water, but instead as a natural sink that has over time been filled by overflow from the Colorado (one can argue whether the man-made barriers that breached in 1905 accelerated or delayed that natural fill). Decisions today to redirect existing flows into the Salton Sink implicate, in the County's view, the public trust. As just as this Board ruled in Decision 1631 at Mono Lake, the public trust includes scenery, recreational use, and healthy air quality.

In summary, we do not expect this Board to repeat the mistake of its predecessors in 1940 at Mono Lake, who recognized the degradation of natural

and economic values their decision would produce, but claimed there was nothing they could do about it. At the end of your hearings, we trust that the parties will aid the Board in using its existing authority to govern the transfer to protect the interests that Imperial County brings to you.¹

THE COUNTY OF IMPERIAL'S POSITION IN THIS PROCEEDING

In 1998 the Imperial County Board of Supervisors responded to the initial transfer proposals by adopting a "no non-temporary fallowing" policy. That policy was honored in the November 1998 transfer agreement that at the moment is before this Board, and also ratified by the Legislature in its 1999 amendment to section 1011 of the Water Code, which recognizes only temporary fallowing as a source of "conserved water" for transfer.

¹ As a footnote (literally), the County reiterates its previously-expressed concern that the four California water agencies have requested this proceeding to produce a "non-precedent" decision. These parties remain free to do, as they have in the proposed Implementation Agreement (IA) and Quantification Settlement Agreement (QSA), pledge to each other not to use their appearance here as a jurisdictional concession in any future proceedings. But the legal issues of concern to the County, such as the duty of this Board to consider the economy and environment of Imperial, whether under rubric of reasonable use or public trust doctrine, cannot escape statewide scrutiny and application; they are likely to be tested on judicial review, in this proceeding or another one, and they deserve uniform statewide application. In any event, the Board must ensure that its decision in this proceeding on other than jurisdictional issues will bind all California agencies here and in any other proceeding.

The premises of the County's "no-fallowing" policy have been challenged in two respects. First, to "purchase peace" from the Metropolitan Water District and Coachella Valley Water District in the QSA, IID agreed to make available transferred water to those districts. Second, in the past four years we have all become aware of the unanticipated impacts of the proposed transfer on the Salton Sea.

The County continues to overwhelmingly prefer a no-permanent-fallowing transfer. Unless Water Code section 1011 is modified again, state law does not authorize more (and IID and San Diego cannot voluntarily opt out of that provision). We praise the initial efforts of IID and San Diego to produce a transfer arising solely from on-farm and system conservation, and will argue that all the various arrangements (IA, QSA, and this transfer) be adjusted to accomplish that result and still maintain the Salton Sea.

The County asks that action be required in the Metropolitan and San Diego service areas to wean off any transfer and onto desalinization as time progresses. Development of this (or another alternative) in the coastal plain should parallel Imperial County's anticipated future needs for both the urban and agricultural sectors. As stated above, we anticipate in the next two decades to double our domestic water need to 120,000 acre-feet-annually. It is reasonable to require that the coastal areas by year 2020 produce at least that much from desalinization,

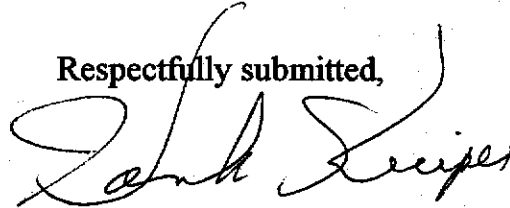
to return water to meet both our growing urban need and also future demands for agricultural development in the Imperial Valley. To date, the transfer has assumed that it will increase in volume over time, when in the reality of our own needs and new technology, *reduction* over time is compelled.

Finally, if despite the best efforts of all, a long-term supply of water from fallowed Imperial County land becomes preferred, the use of water "conserved" from fallowing must be conditioned upon the IID first preparing and adopting a program for producing that water, and securing the concurrence of Imperial County in that program. Our concurrence is necessary to ensure that *all* the interests we represent in this valley are protected. Before implementing such a program, it must be subject to a second-tier environmental assessment that follows on the successful completion of the water transfer assessment now being conducted. Compliance with or modification of Water Code section 1011 with the concurrence of Imperial County must be achieved. Salton Sea stability must be assured. And economic losses to local government and districts, embracing both lost tax revenues and social service costs, must be compensated.

This Board's requirement that any "fallowing-based" transfer be preceded by preparation and adoption of a systematic program that addresses economic and environmental impacts, meriting the concurrence of the County of Imperial, may

well afford the one legal and institutional means of securing timely approval of the long-term Imperial-San Diego transfer.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Hank Kuiper". The signature is written in dark ink and is positioned above the printed name and title.

HANK KUIPER
Chair, Board of Supervisors
County of Imperial