

COLORADO RIVER BOARD OF CALIFORNIA

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October 11, 2002

Victoria Whitney, Program Manager
Hearings and Special Projects Section
Division of Water Rights
STATE WATER RESOURCES CONTROL BOARD
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Comments of Colorado River Board of California on the Draft Order Regarding Imperial Irrigation District and San Diego County Water Authority Petition for Long-Term Transfer of Conserved Water

Dear Ms. Victoria Whitney:

The Colorado River Board of California has received a copy of the September 26, 2002, draft Order of the State Water Resources Control Board (SWRCB) regarding the "Amended Joint Petition of the Imperial Irrigation District and San Diego County Water Authority for Approval of a Long-Term Transfer of Conserved Water Pursuant to an Agreement Between IID and SDCWA and Petition of the Imperial Irrigation District to Change the Purpose and Place of Use and the Point of Diversion" (Draft Order). In reviewing the Draft Order, the Colorado River Board reiterates the comments contained in its July 2, 2002, letter sent to Mr. Arthur G. Baggett, Jr, the Hearing Officer for the SWRCB. A copy of the Board's July 2nd letter is attached for your reference.

In addition, the Colorado River Board submits the following specific comments on the SWRCB's September 26, 2002 Draft Order.

Page 15, first paragraph: The State of Arizona must be added to the list of "Upper Basin" states. In the same vein, New Mexico and Utah must be added to the list of the Lower Basin States. Article II of the 1922 Colorado River Compact defines the terms "Upper Basin States" and "Lower Basin States," as well as "Upper Division States" and "Lower Division States."

Page 15, Footnote No. 3: Footnote No. 3 on page 15 of the Draft Order is not accurate. The apportionments contained in Article III of the 1922 Colorado River Compact are to each basin in perpetuity without regard to the beneficial consumptive use of water in either Basin. Thus, the second sentence of the footnote should be omitted. Those apportionments to the upper and lower basins are for water from the "Colorado River system." In fact, the Compact, in Article II, defines

the term Colorado River system as "...that portion of the Colorado River and its tributaries in the United States of America." The Colorado River system would include all of the waters in each of the tributaries to the mainstream of the River. For example, system water would include tributaries such as the Gila, Salt, and Bill Williams Rivers, all located exclusively within the State of Arizona.

Page 15, third paragraph: The Opinion and Decree of the United States Supreme Court, in *Arizona vs. California* (373 U.S. 546 (1963); and 376 U.S. 340 (1964) interpreted the apportionment of the water in the "mainstream" of the Colorado River provided for in the 1928 Boulder Canyon Project Act (BCPA) to the States of Arizona, California, and Nevada; with 2,800,000 acre-feet apportioned to Arizona, 4,400,000 acre-feet apportioned to California, and 300,000 acre-feet apportioned to Nevada. Mainstream is defined in the 1964 Decree as "...the mainstream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon" (Article I(B), 376 U.S. 340, 1964). Additionally, the Colorado River Board suggests that the term, used in this paragraph, "Lower Basin States," be replaced with "Lower Division States."

Pages 52 and 53: The discussion regarding present perfected rights on these pages should be omitted. It is not necessary to the decision because Imperial Irrigation District and the other Quantification Settlement Agreement parties have not proposed to deliver water to the Salton Sea in a manner that would require a change in Imperial Irrigation District's existing contract and permit. Water currently reaches the sea as an incident to existing contract and permit purposes and the salinity requirement of SB 482 and the proposed decision can be met by uses within the existing contract and permit terms. The discussion also overlooks the fact that there is significant dispute as

to whether, under the U.S. Supreme Court's March 9, 1964, Decree in *Arizona v. California* (376 U.S. 340), present perfected rights of non-federal establishments have any application outside of shortage situations¹ and whether the right holder may change its place and purpose of use if contrary to the terms of its mandatory Section 5 contract with the Secretary.²

¹Article II(B)(3) of the Decree provides: "If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States [Arizona, California and Nevada], then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective States may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes, but in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights."

²Article II(B)(5) of the Decree provides: "Notwithstanding the provisions of Paragraphs (1) through (4) of this subdivision (B), mainstream water shall be released or delivered to water users (including but not limited to public and municipal corporations and other public agencies) in Arizona, California, and Nevada only pursuant to valid contracts therefor made with such users by the Secretary of the Interior, pursuant to Section 5 of the Boulder Canyon Project Act or any other applicable federal statute" Further, Article III of the Decree specifically enjoins, among others, California and Imperial Irrigation District "(C) From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective States; provided that no party named in this Article and no other user of water in said States shall divert or purport to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for its particular use."

Ms. Victoria Whitney
September 11, 2002
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Sincerely,

Gerald R. Zimmerman
Executive Director

c: Ms. Dana Differding (SWRCB Staff Counsel)
Service List