

VAW
TDP
Files - 7482

2-12-02

To: State Water Resources Control Board

Subject: Policy statement on the water transfer directed to the 4-22-02 hearing in Imperial Valley

Thank you for holding a non-evidentiary hearing in Imperial Valley. The petition was submitted out of closed session and there has never been a hearing on it locally.

I protested IID's statement in the petition that "its water is under state jurisdiction." SWRCB responded in a timely manner. Except for a difference in semantics, I was satisfied with the response and withdrew my protest.

Using my semantics, I conclude that the language in the petition should be changed as follows:

- IID's water is under federal jurisdiction and the Law of the River applies.
- Notwithstanding, pursuant to Section 5, Article III of the California Constitution, and there being no federal prohibition, it is held that SWRCB has the "responsibility and attending authority" to receive, process, and act on IID's petition. ("Responsibility and attending authority" has a different meaning than "jurisdiction.")

The Law of the River includes:

- (1) Part 417 law that water shall be put to reasonable and beneficial use.
- (2) Unused apportionment water shall remain in the River for the benefit of the other basin states.
- (3) In California, unused entitlement water shall remain in the river for the benefit of junior stakeholders (CVWD and MWD).
- (4) IID's water rights are held in trust by the District for the benefit of the landowners. (The landowner in the District do not own the water rights.)

Referring to your letter of 2-6-02, the Parties have requested that "the final order on IID's and SDCWA's petition will not be designated as a precedent decision." Not understanding all the legal implications of the request, I assume it reinforces the "responsibility and attending authority" role of SWRCB.

In contrast, the response to this request from Antonio Rossman, special counsel to the County of Imperial, appears to support the erroneous statement in the petition that IID's water is under state jurisdiction, i.e., in part Mr. Rossman states on pages 3, paragraph 2:

...the Parties may be able to reserve their differing views of this Board's jurisdiction...

I support the request of the Parties. And I request that the Board approve it.


Cliff Hurley