

TDP

3-2-02

To: State Water Resources Control Board  
Subject: Additional policy statement directed to the hearing scheduled for 4-22-02

The central issue of my earlier policy statement, dated 2-12-02, was that:

- (1) IID's water is under federal jurisdiction and the Law of the River applies.
- (2) Notwithstanding, pursuant to Section 5, Article III of the California Constitution, and there being no federal prohibition, SWRCB has the responsibility and attending authority to receive, process and act on IID's water transfer petition.

In Project Background and History section of the executive summary of the project EIR, page 1, it summarizes the Elmore wasting water complaint handled by SWRCB.

IID protested SWRCB hearing the Elmore complaint based on its position that the state did not have jurisdiction. The SWRCB response was that its proceedings would continue and IID could appeal its actions, which IID did and lost the appeal. IID lost because it did not make a distinction between "jurisdiction" and "responsibility and attending authority."

Through this skewed Elmore complaint hearing process, the people in Imperial Valley were denied the benefit of the Law of the River, i.e.

- (1) Water shall be put to reasonable and beneficial use.
- (2) Unused entitlement water shall remain in the River for the benefit of the junior stakeholders.

Rather SWRCB handled the complaint as if it were under state jurisdiction and the state's priority of use was applied, i.e.

—In Decision 1600, SWRCB concluded: "A transfer of conserved water could partially satisfy future Southern California needs."

SWRCB did not deal with regular and extraordinary conservation nor a baseline to establish wet water. SWRCB's actions constituted a "facilitated state taking." And it was wasted rather than wet water which was transferred (i.e. a state taking is based on priority and need).

My request is that Decision 1600 neither prejudice nor influence future SWRCB actions. And more particularly I request that SWRCB recognize and respect the Law of the River in these matters.

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Cliff Hurley