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AJF

10-5-02

State Water Resources Control Board

Subj: Comments on the draft order to approve the water transfer petition

### **Due Process**

The process of the SWRCB was deemed to be appropriate and assumed to be consistent with the state administrative procedures act.

In contrast, the consensus process of the Secretary of the Interior was cloistered and presumed to be outside the federal administrative procedures act.

There was flagrant lack of due process by the petitioners based on them submitting the petition and the amendments to the petition directly out of closed session. This deficiency was absolute because SWRCB does not have the power to change the statements within the petition. Most specifically, my concerns, which were not remedied, included:

- (1) The statement in the petition that IID's water is under state jurisdiction.
- (2) An improperly prepared second amendment wherein the intent is not clear.

### **Being Honest**

Based on the response that I received from SWRCB to my protest that IID's water is not under state jurisdiction, as well as the Colorado River Board of California correspondence to you that stated that the Colorado River water is under federal jurisdiction and transfers from the River constitute interstate transfers, I thought the petitioners did not act in good faith when they did not change their "state jurisdiction" statement in the petition.

Likewise, I think SWRCB's determination that IID's water is being put to reasonable and beneficial use runs contrary to the facts which were of general knowledge (whether they were introduced as formal evidence or not), i.e.

- (1) The Part 417 process and proceedings of the Bureau of Reclamation of two years ago wherein Reclamation concluded that IID was not using at least 200,000 AFY efficiently.

- (2) IID openly and defiantly doing nothing to demonstrate that it was putting its water to reasonable and beneficial use, including declaring that its tailwater program was "token" (aka abandoned).

**Being Reasonable and Responsible**

I commend you for being reasonable as well as responsible in dealing with the environmental impacts, e.g.

—There is no restoration plan for Salton Sea

—In the last analysis, the Sea may be difficult, if not impossible, to save

And I think the balance that was struck was as good as could be expected.



Cliff Hurley, owner  
Tyee

cc: IID  
Bennett Raley, Assistant Secretary, Water & Science