



Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

1001 I Street, 25th Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5615 ♦ FAX (916) 341-5621 ♦ www.swrcb.ca.gov



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Governor

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February 6, 2002

To: [Enclosed Service List](#)

PETITION OF IMPERIAL IRRIGATION DISTRICT AND SAN DIEGO COUNTY WATER AUTHORITY FOR APPROVAL OF LONG-TERM TRANSFER OF CONSERVED WATER - REVISED NOTICE OF PUBLIC HEARING AND AMENDMENT TO PETITION

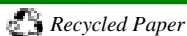
Enclosed please find a revised notice of amendment to and public hearing on the petition of Imperial Irrigation District (IID) and San Diego County Water Authority (SDCWA) for approval of a long-term transfer of conserved water. The enclosed notice supercedes a notice of public hearing issued on December 20, 2001. The revised notice makes changes based on information received at a pre-hearing conference held on January 23, 2002. I encourage participants in the upcoming State Water Resources Control Board (SWRCB) hearing to read the revised notice carefully because it contains a number of changes. The following describes the more significant changes to the notice.

At the pre-hearing conference, some participants requested that all or some portions of the hearing be held in Imperial County. In response to this request, the SWRCB will hear policy statements from parties and interested persons on April 22, 2002, at the Barbara Worth Resort in Holtville, California. An interpreter will be available to translate the proceeding into Spanish, and to translate any policy statements made in Spanish into English. As originally scheduled, the evidentiary portion of the hearing will be held in Sacramento, California, beginning on April 23, 2002.

Some participants at the pre-hearing conference also suggested that the hearing be conducted in phases. I have concluded that conducting the hearing in two phases should save time and resources, and will give parties and interested persons more time to evaluate the joint draft Environmental Impact Report/Environmental Impact Statement recently released by IID and the U.S. Bureau of Reclamation. Phase I of the hearing will address whether the transfer would result in substantial injury to any legal user of water, and other key issues concerning the transfer, IID's water rights, and IID's conservation program. Phase II will address whether the transfer would unreasonably affect fish, wildlife, or other instream beneficial uses. Phase I of the hearing will commence on April 23, 2002 and continue if necessary on April 24 and April 29. Phase II will commence on April 30 and continue if necessary on May 1.

The revised notice also provides for submittal to the SWRCB of policy statements, written testimony and exhibits in electronic form. In addition, hearing participants may agree to accept electronic service of those documents in accordance with the provisions of the revised notice.

California Environmental Protection Agency



At the pre-hearing conference, IID, SDCWA, and protestants Coachella Valley Water District (CVWD) and Metropolitan Water District of Southern California (MWD) provided an update on the protest dismissal agreement recently reached by the four parties. The key hearing issues listed in the enclosed notice have been revised to reflect the protest dismissal agreement.

As a condition of their agreement, the parties have also asked the SWRCB to determine, prior to the hearing, that the SWRCB's final order on IID's and SDCWA's petition will not be designated as a precedent decision in accordance with section 11425.60 of the Administrative Procedure Act (Gov. Code, § 11400 et seq.). The parties emphasized the importance of this issue in resolving CVWD's and MWD's protests to the transfer petition. The parties have asked for some form of resolution of this issue prior to commencement of the hearing.

This issue whether the SWRCB's final order on the transfer petition should be designated as precedent cannot be resolved at this time. The decision whether to designate an SWRCB order or decision as precedent can only be decided by the SWRCB, not the hearing officer.

Government Code section 11425.60, subdivision (b) provides that an agency may in its discretion designate a decision as precedent. The authority to make this determination is vested in the agency, in this case the SWRCB, as opposed to the hearing officer. (See Gov. Code, §§ 11405.30 [definition of "agency"]; 11405.80 [definition of "presiding officer"].) In the past, when the SWRCB has determined whether a decision or order should be designated as precedent, it has done so in a SWRCB decision or order. (See, e.g., Order WQ 2001-07; Order WQ 1999-05; Order WR 96-1.) The SWRCB has not delegated this authority to SWRCB staff or to a board member acting as hearing officer. (See SWRCB Order WQ 2001-05-CWP.)¹

That said, the members of the hearing panel, comprised of SWRCB Member Richard Katz and myself, would like to inform the parties that we support the position that the SWRCB's final order on the petition should not be designated as precedent. It is the SWRCB's practice to promote voluntary settlements among the parties. Designating the final order as non-precedential will further the efforts by the petitioners and the protestants who are parties to the dismissal agreement to resolve issues pertaining to the transfer petition, without prejudice to other parties.

In closing, I wish to remind participants that, during the pendency of this proceeding, ex parte communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding are prohibited. (Gov. Code,

¹ After the pre-hearing conference, IID, SDCWA, CVWD and MWD submitted a letter to me, dated January 28, 2002, in which they argued that the a hearing officer has the authority to determine whether to designate a SWRCB order or decision as precedent. For the reasons stated above, I disagree with the arguments advanced by the parties. In addition, the letter constitutes an ex parte communication, which is subject to Government Code section 11430.10. In accordance with Government Code section 11430.50, the letter will be made a part of the record in this proceeding.



§§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible (Gov. Code, § 11430.20, subd. (b)), and may be directed either to me or Dana Differding, Staff Counsel. Ms. Differding may be reached at (916) 341-5188.

Sincerely,

/s/

Arthur G. Baggett, Jr.
Hearing Officer

Enclosures

cc: Mr. Richard Katz, Executive Office [24th Floor]
Andy Fecko, Division of Water Rights [14th Floor]
Tom Peltier, Division of Water Rights [14th Floor]
Dana Differding, Office of Chief Counsel [22nd Floor]
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



**Imperial Irrigation District
Interested Parties List**

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Mr. Thomas Levy, Gen. Manager
Coachella Valley Water District
P.O. Box 1058
Coachella, CA 93326

Gerald Zimmerman, Exec. Dir.
Colorado River Board
770 Fairmont Ave. #100
Glendale, CA 91203-1035

Curt Taucher, Regional Manager
Dept. of Fish & Game, Region 6
330 Golden Shore, #50
Long Beach, CA 90802

Metropolitan Water District of
Southern California
700 N. Alameda Street #1-304
Los Angeles, CA 90012

California Dept. of Fish & Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Office of Chief Counsel
Dept. of Water Resources
1416 Ninth Street, Rm. 1115
Sacramento, CA 95814

Thomas Graff
Environmental Defense Fund
5655 College Avenue
Oakland, CA 94618

John Elmore
P.O. Box 156
Brawley, CA 92227

Stephen Elmore
P.O. Box 119
Brawley, CA 92227

Cliff Hurley
1108 W. Highway 80
El Centro, CA 92243

David L. Osias
Allen, Matkin, Leck, Gamble &
Mallory
Attorneys at Law
501 West Broadway, Ninth Floor
San Diego, CA 92101-3547

Imperial County Board of Supervisors
940 Main Street, Suite 212
El Centro, CA 92243

Imperial Irrigation District
Public Information Office
PO Box 937
Imperial, CA 92251



Larry A. Gilbert
945 E. Worthington Road
Imperial, CA 92251

Paul J. Giuntini
Big River, California
c/o Big River Development Co.
4646 E. Ft. Lowell, Ste. 106
Tuscon, AZ 85712

City Clerk
City of Blythe
220 N. Spring Street
Blythe, CA 92225

Mr. Michael Spear
Deputy Secretary for Land
Conservation and Stewardship
Resources Agency
1416 Ninth Street, Suite 1311
Sacramento CA, 95814

Brooke Water LLC
9079 Riverside Drive
Parker, AZ 85344

Colorado River Indian Tribe
26600 Mojave Road
Parker, AZ 85344

Bureau of Land Management
Arizona State Office
222 N. Central Avenue
Phoenix, AZ 85004

Bureau of Land Management
California State Office
2800 Cottage Way, Rm. W1834
Sacramento, CA 95825-1886

Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV 89502-7147

United States Dept of the Interior
Fish and Wildlife Services
Ecological Services
c/o Sheryl L. Barrett
Carlsbad Fish and Wildlife Office
2730 Loker Avenue, West
Carlsbad, CA 92008

Mike Hawkes, Manager
Cibola National Wildlife Refuge
Route 2, Box 138
Cibola, AZ 85328

Cibola Valley Irrig. & Drain. Dist.
Cibola Station
Cibola, AZ 85328

Robert W. Hargreaves, Esq.
Best, Best & Krieger, LLP
74-760 Highway 111, Ste 200
Indian Wells, CA 92210

Tom Kirk, Executive Director
Salton Sea Authority
78-401 Highway 111, Ste "T"
La Quinta, CA 92253

Larry Covell
Ehrenberg Improvement Assn.
P.O. Box 315
Ehrenberg, AZ 85334

John Carter
Horton, Knox, Carter, and Foote
895 Broadway, Suite 101
El Centro, CA 92243

Robert W. Hargreaves
Best Best & Drieger LLP
P.O. Box 13650
Palm Desert, CA 92210

Mitchell Ellis, Mgr.
Imperial National Wildlife Refuge
P.O. Box 72217
Yuma, AZ 85365



City of Los Angeles
c/o James Hahn, City Atty.
200 N. Main Street, Rm. 1800
Los Angeles, CA 90012

Barbara Dunlap
Hillcrest Water Co.
915 E. Bethany Home Rd.
Phoenix, AZ 85014

Scott Slater
Hatch and Parent
21 East Carillo Street
Santa Barbara, CA 93107

Patty Vida
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Martinez Lake, AZ
Main Office
Martinez Lake, AZ 85365

Picacho State Recreation Area
Dept. of Parks & Recreation
P.O. Box 848
Winterhaven, CA 92283

Picacho State Recreation Area
Salton Sea Sector Headquarters
100-225 State Park Rd.
North Shore, CA 92554

Robert E. Perkins
Riverside County Farm Bureau, Inc.
21160 Box Springs Road, Suite 102
Moreno Valley, CA 92557

State of Nevada
Dept. of Water Resources
123 West Rye Lane, Suite 246
Carson City, NV 89706

San Diego County
c/o John Sansone, City Counsel
1600 Pacific Hwy., Room 355
San Diego, CA 92101

Alberto Szekely
Plaza Del Carmen 5, Despacho 6
Costado Calle De La Amargura
San Angel
Mexico, D.F. 01000

Mr. John Redlinger
U.S. Department of the Interior
Bureau of Reclamation
PO Box 61470
Boulder City, NV 89006-1470

U.S. Bureau of Reclamation
Parker Dam/Gov Camp
Parker Dam, CA 92267

State of Arizona
Dept. of Water Resources
500 North 3rd Street
Phoenix, AZ 85004

Fort Mojave Indian Tribe
Attn: Nora Helton, Chairperson
500 Merriman Avenue
Needles, CA 92363



Mayor/City Manager
Vidal, CA 92280

U.S. Bureau of Reclamation
Yuma Project
7301 S. Calle Agua Salada
Yuma, AZ 85364

Town of Parker Water Dept
1314 11th Street
PO Box 609
Parker, AZ 85344

Imperial Irrigation District
Water Conservation Advisory Bd.
1284 Main Street
El Centro, CA 92243

City of San Diego
c/o Casey G. Gwinn, City Atty.
1200 Third Avenue #1600
San Diego, CA 92101

Ronald A. Van Blarcom
307 East Chapman Avenue
Orange, CA 92866

Robert Maddow
Bold, Polisner, Maddow, Nelson,
and Judson
500 Ygnacio Valley Road, Ste. 325
Walnut Creek, CA 94596-3840

Coachella Valley Water District
PO Box 1058
Coachella, CA 92236

Steve Rhodes
Energy Commission
1516 9th Street MS-39
Sacramento, CA 95814

Office of Chief Counsel
Dept. of Water Resources
1416 Ninth Street, Rm. 1115
Sacramento, CA 95814

Linda Moiola
549 Marilyn Ave.
Brawley, CA 92227

William I. DuBois
3939 Walnut Ave, No. 144
Carmichael, CA 95608

Mr. Gerald Shoaf
Redwine and Sherrill
1950 Market Street
Riverside, CA 92501

Anne Schneider
2015 H Street
Sacramento, CA 95814-3009

Charles F. Raysbrook, Reg. Mgr.
Dept. of Fish & Game Region 5
4949 Viewridge Avenue
San Diego, CA 92123



Felger and Associates
Counselors at Law
726 West Barstow Ste. 106
Fresno, CA 93704

Russell G. Behrens
McCormick, Kidman, & Behrens, LLP
695 Town Center Drive, Suite 1400
Costa Mesa, CA 92626-7187

Regional Water Quality Control Board
Colorado River Basin, Region 7
73-720 Fred Waring Dr, Ste 100
Palm Desert, CA 92260

Lori Okun
SWRCB – OCC
901 P Street
Sacramento, CA 95814

Lemieux & O'Neill
2393 Townsgate Road, #201
Westlake Village, CA 91361-2517

Michael Cox
Imperial County Farm Bureau
1000 Broadway
El Centro, CA 92243-2315

Executive Director
San Diego County Farm Bureau
1670 East Valley Parkway
Escondido, CA 92027-2498

Mr. Bennett Raley
Assistant Secretary of the Interior
for Water and Science,
U.S. Department of Interior
1849 "C" Street, Northwest
Washington, D.C. 20240

Mr. Robert Johnson
U.S. Department of the Interior
Bureau of Reclamation
P.O. Box 61470
Bolder City, NV 89006-1470

Jesse Silva
General Manager
Imperial Irrigation District
PO Box 937
Imperial, CA 92251

PO Box 937
Imperial, CA 92251

Antonio Rossmann
380 Hayes Street, Suite 1
San Francisco, CA 94102

Arthur L. Littleworth
Best, Best & Krieger
3750 University Ave. Ste 400
Riverside, CA 92501

Ralph Cordova
County Counsel
County of Imperial
940 West Main Street, #205
El Centro, CA 92243

California Farm Bureau Federation
c/o David J. Guy
2300 River Plaza Drive
Sacramento, CA 95833-3239



Simone
3751 Capri Lane
Desert Shores Thermal, CA
92274-8395

Ms. Maureen Stapleton
San Diego County Water Authority
4677 Overland Ave

Tom Davidson
Wyoming Attorney General's Office
123 Capitol Bldg.
Cheyenne, WY 82002

Kent Holsinger
Assistant Director
Colorado Dept. of Natural Resources
1313 Sherman Street
Denver, CO 80203

Mr. D. Larry Anderson
Utah Division of Water Resources
1594 W. North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-1201

DL Sanders
Water Rights Protection
and Adjudication Program
P.O. Box 25102
Santa Fe, NM 87504

Sierra Club
85 Second St., Second Floor
San Francisco, CA 94105-3441

Dan Taylor
Executive Director
Audubon Society
555 Audubon Place
Sacramento, CA 95825

Los Angeles Audubon Society
7377 Santa Monica Blvd
West Hollywood, CA 90046

Sierra Club
3435 Wilshire Blvd.
Los Angeles, CA 90010-1819

Summer Bundy
Department of Water Resources
770 Fairmont Av. Suite 102
Glendale, CA 91203

Jeanine Jones
Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Brendan Fletcher
Defenders of Wildlife
926 J Street, Suite 522
Sacramento, CA 95816

John Brown
11317 Tunnel Hill Way
Gold River, CA 95670

Michael Cohen
Pacific Institute
948 North Street, Suite 7
Boulder, CO 80304



Neva Sotolongo
California Air Resources Board
PTSD
1001 I Street
Sacramento, CA 95812

Charles Keene
Water Management Branch
Department of Water Resources
770 Fairmont Av. Suite 102
Glendale, CA 91203

Marv Shaw
Cadiz Inc.
100 Wilshire Blvd., Suite 1600

Karen Douglas
Planning and Conservation League
926 J Street, Suite 612
Sacramento, CA 95814

Bill Yeates
Law Offices of J. William Yeates
8002 California Ave.
Fair Oaks, CA 95620

Henry Rodegerdts
California Farm Bureau
2300 River Plaza Drive
Sacramento, CA 95833

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