

October 24, 2002

Arthur Baggett, Jr.
Chairman and Hearing Officer
State Water Resources Control Board
1001 'I' Street, 22nd Floor
Sacramento, CA 95814

Re: National Audubon-CA, Sierra Club California, National Wildlife Federation, Defenders of Wildlife, and Planning and Conservation League Joint Comment Letter on Revised Draft Order Regarding the Amended Joint Petition of the Imperial Irrigation District (IID) and San Diego County Water Authority (SDWA) for Approval of a Long-Term Transfer of Conserved Water Pursuant to an Agreement Between IID and SDCWA and Petition of the IID to Change the Purpose and Place of Use and the Point of Diversion Under Permit 7643.

Dear Chairman Baggett:

On behalf of National Audubon Society – California, Sierra Club California, National Wildlife Federation, Defenders of Wildlife, and the Planning and Conservation League (“the organizations”), I am presenting the following comments on the September 26, 2002, Draft Order (Order WRO 2002-) referenced above.

This letter focuses on the limited revisions made to the September 26 draft order. We incorporate the more comprehensive comments we made in our October 11th, 2002 comments and our April, 2002 joint comment letter on the on the IID Water Conservation and Transfer Project and Draft Habitat Conservation Plan DEIR/DEIS, which was made part of the record of proceedings here.

1. The 15-Year Mitigation Limit

The SWRCB has made revisions to its statements of overriding considerations for environmental impacts after fifteen years (pages 76-77). These revisions appear to downplay the likelihood of adverse impacts or shift responsibility for them to other entities rather than changing the substance of the findings.

Since the SWRCB has reserved continuing authority to consider whether to “add, delete, or modify” the mitigation measures embodied in the Salton Sea Habitat Conservation Strategy in light of the results of the study on the feasibility of Salton Sea restoration, we object to the statement of overriding considerations. The Order acknowledges that there are currently feasible mitigation measures to reduce or avoid the identified significant adverse effects of the water transfer on

fish and wildlife resources. Furthermore, as the Order also acknowledges it is foreseeable that future actions at the Salton Sea may trigger a re-evaluation of the Salton Sea Habitat Conservation Strategy.

We respectfully request that the SWRCB modify its order to require supplemental CEQA analysis before the fifteen-year period has run, or before it re-evaluates the Salton Sea Habitat Conservation Strategy. This will allow the Board's 15-year conditional approval to satisfy the mitigation requirements of CEQA. Since the Board has staged its approval of the Permittee's application, subsequent or supplemental evaluation triggered either by the conclusion of the 15-year period or the results of the study on the feasibility of Salton Sea restoration would be necessary to address mitigation requirements after the initial 15-year period.

As we stressed in prior comments, the initial fifteen-year mitigation period is not supported by substantial evidence in the record. Rather the Board has borrowed this timeframe from SB 482. SB 482 was not enacted to reduce or avoid the water transfer's significant effects on fish and wildlife resources. Nor does SB 482 exempt the State Water Board's decision on the water transfer from CEQA's requirement to avoid or reduce significant effect where feasible before approving the Permittee's application. SB 482 provides a limited exemption for the take of fully-protected species, so long as specified conditions at the Salton Sea are maintained for a 15-year period.

2. Air Quality Issues:

The revised draft order makes the following two changes, (1) adding a requirement that IID implement a research and monitoring program at the on dust emissions from exposed Salton Sea sediments within six months of the effective date of SWRCB approval, and (2) requiring implementation of mitigation measures for windblown dust from exposed sea bed if the Chief of the Division of Water Rights to determines that such measures are "feasible and necessary" to mitigate air quality impacts of the project to less than significant levels.

A. The requirement that IID begin its air quality research and monitoring program within six months of project approval does not ensure that needed information will be developed, made available to the public, or incorporated into project design.

First, we appreciate the new requirement that IID begin its research and monitoring program at the Salton Sea within six months of project approval. This requirement will help generate critical information about the potential for dust emissions problems from exposed sediments of the Salton Sea.

Unfortunately, any research and monitoring requirement will be eclipsed by the fact that the SWRCB will have already approved the transfer project and adopted

statements of overriding considerations for environmental impacts that may occur. We recognize that the SWRCB does impose conditions in its draft order that protect against some environmental impacts after fifteen years, but this does not resolve the problem of ensuring that new information obtained through research and monitoring will be used to make decisions about how the transfer is to proceed.

Research into potential impacts and the feasibility of proposed mitigation measures to address those impacts should take place before project approval, not after it. The SWRCB could go a long way toward remedying this problem by requiring supplemental CEQA review before authorizing any deviation from the the Salton Sea Habitat Conservation Strategy.

We also request that the SWRCB require that the methodology and conclusions of IID's air quality research and monitoring program be subject to peer review, and that the information developed be made available to the public and to air pollution control districts with jurisdiction over the Salton Sea and surrounding areas.

B. The SWRCB should require full mitigation of air quality impacts of the transfer.

The revised draft order authorizes the Chief of the Division of Water Rights to determine whether dust mitigation measures are "feasible and necessary" to mitigate air quality impacts of the project to less than significant levels. If the Chief of the Division of Water Rights finds that such measures are "feasible and necessary", implementation of such measures will be a condition of the order.

We question the appropriateness of the Chief of the Division of Water Rights making a determination that air quality mitigation measures are not "feasible". We do appreciate this effort to deal with of the concerns raised in our comments of October 11, 2002, where we questioned the value of requiring implementation of the mitigation plan in the EIR/EIS when that plan is little more than a short list of mitigation options and a promise to implement measures that are found to be feasible.¹ However, the only way we see to overcome this fundamental weakness in the mitigation plan is to require that air quality mitigation actually succeed in reducing air quality impacts to a less than significant level.

¹ The comment letter stated, "Unfortunately, the air quality mitigation measures identified in the FEIR are too vague to give any meaning to the SWRCB's requirement that IID implement this plan. For example, IID could try and fail to predict whether dust emissions from the Salton Sea will occur, try and fail to create a program of PM10 emission reduction credits, try and fail to control dust emissions at the Salton Sea, submit a report every year, and thus comply with the SWRCB's order without reducing the air quality problem at all. What level of effort is required at each of these stages to comply with the SWRCB's requirements? What level of difficulty in securing funding or water for mitigation measures merits a finding that mitigation is not "feasible"?"

The revised order strengthens the approach taken in the first draft order by introducing a level of oversight into what measures are considered feasible. However, it appears that the SWRCB would allow degradation of air quality to occur if the Chief of the Division of Water Rights finds that mitigation is not feasible. The revised draft order does not clarify what standards the SWRCB proposes to apply to determine if mitigation measures are feasible. The Final EIR/EIS adopts a very weak standard for “feasibility”, suggesting that difficulty in obtaining water or funding needed for implementation could excuse air quality mitigation.³

We hope that the SWRCB would adopt a much more stringent standard than that articulated in the Final EIR/EIS, but the revised draft order does not provide any guidance on this point. In any case, if an air pollution control district with jurisdiction over the Salton Sea finds that a particular mitigation measure or combination of measures is feasible, this finding should be determinative.

While the SWRCB’s states its belief that air quality impacts will be successfully mitigated, it stops short of requiring this outcome, setting up a potential conflict between SWRCB findings on feasibility and the attainment of federal air quality standards and protection of public health and the economy in the Imperial and Coachella Valleys.

In conclusion, we request that the SWRCB condition the transfer on mitigation of air quality impacts to less than significant levels and compliance with mitigation measures required by air pollution control districts to attain air quality standards. Finally, while this may be implicit in requiring implementation of mitigation measures, we ask the SWRCB to clarify that IID and/or its water transfer partners must pay the costs of mitigating air quality impacts of the transfer.

3. The SWRCB should clarify that maintaining Sea elevation is a reasonable and beneficial use of water.

The SWRCB states, on page 51, that IID may conserve water to maintain Salton Sea elevation. The Order also states, on page 52, that “use of water for the preservation and enhancement of fish and wildlife resources” is a beneficial use. We support this statement, and add that maintenance of Salton Sea elevation preserves public trust values such as species protection and air quality protection. Thus, the SWRCB must modify its order to make the necessary finding that maintenance of Salton Sea’s elevation and the preservation and

³ “Without information on the nature and extent of the potential problem to be mitigated, it is unwise and impractical to propose or commit prematurely to costly dust control mitigation measures. Further, the dust control mitigation measures studied and under implementation at other lakebeds, such as Mono and Owens, may not be feasible or practical at the Salton Sea, given limitations on financial resources and the constraints on water availability for mitigation in this desert area.” FEIR 3-50

enhancement of fish and wildlife resources are reasonable and beneficial uses of water.

4. Conclusion

In order to protect their rights under the law, the organizations object to the Water Boards adoption of the Draft Order for the reasons set forth in this letter, the April 25, 2002 joint organizations comment letter on the DEIR/DEIS, and within the record of proceedings. In addition, the organizations request written notice of the filing of a Notice of Determination regarding the adoption of this proposed order. Notice to be served on the organizations at the addresses set forth within the service list that has been used throughout this proceeding.

Sincerely,

Bill Yeates