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8 **STATE WATER RESOURCES CONTROL BOARD**

9 **STATE OF CALIFORNIA**

10

In re Amended Joint Petition of the Imperial)
11 Irrigation District and the San Diego County)
Water Authority for Approval of a Long-Term)
12 Transfer of Conserved Water Pursuant to an)
Agreement between IID and SDCWA.)
13 _____)
14 _____)

APPLICATION NO. 7482
IID/SDCWB, WATER TRANSFER
HEARING, PHASE II
CLOSING ARGUMENTS/ POST TRIAL
BRIEF SUBMITTED BY THE
NATIONAL WILDLIFE FEDERATION

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28 ///

TABLE OF CONTENTS

1

2 I INTRODUCTION 2

3 II. GROWTH INDUCEMENT IS A CRITICAL ENVIRONMENTAL

4 IMPACT THAT MUST BE CONSIDERED 2

5 III THE PROPOSED TRANSFER IS GROWTH-INDUCING IN

6 SAN DIEGO COUNTY 4

7 A. The Project Will Increase the Amount of Water Available to

8 San Diego County. 5

9 B. The Project is Growth-Inducing Because it Secures a Reliable

10 Source of Water 8

11 1. SDCWA’s Reliable Water Supplies are Only a Fraction of

12 Those Needed to Meet Existing and Future Needs 8

13 2. SDCWA Plans to Resolve its Shortage of Reliable Water Supplies

14 to Facilitate and Induce Growth 10

15 3. SDCWA Now Needs Reliable Water Supplies to Comply with

16 Recent State Legislation Requiring Assurances of Adequate Water

17 Supplies for New Development 13

18 C. The EIR/EIS Incorrectly Finds no Growth-Inducement on the Ground

19 that the Water Supplied Will be Used to Serve Existing Demand and to

20 Support Growth Already Planned 16

21 IV GROWTH INDUCEMENT WILL UNREASONABLY IMPACT FISH,

22 WILDLIFE AND OTHER INSTREAM BENEFICIAL USES OF WATER 18

23 A. Urban Sprawl is the Single Largest Threat to Fish and Wildlife 18

24 B. Water Quality Impacts to Fish and Wildlife Require Specific Analysis

25 and Mitigation 21

26 V CONCLUSION 24

27

28

1 **I**

2 **INTRODUCTION**

3 Pursuant to Water Code section 1736, the pending application should be denied because the
4 proposed transfer will unreasonably harm fish, wildlife and other instream beneficial uses of water.
5 The project will induce and facilitate growth within the San Diego region, which will in turn result
6 in urban sprawl causing adverse impacts to fish, wildlife and water quality. Sadly, the
7 environmental documentation prepared for this project fails to acknowledge the growth-inducing
8 impacts of the project and therefore provides absolutely no analysis of the myriad impacts arising
9 from such growth. Those omissions are in clear violation of the California Environmental Quality
10 Act (“CEQA”) and the National Environmental Policy Act (“NEPA”).

11 **II.**

12 **GROWTH INDUCEMENT IS A CRITICAL ENVIRONMENTAL**
13 **IMPACT THAT MUST BE CONSIDERED**

14 An action’s potential for inducing growth is a specific environmental consideration that must
15 be addressed and analyzed in an environmental impact report (“EIR”) pursuant to CEQA and an
16 environmental impact study (“EIS”) pursuant to NEPA. California Administrative Code, title 14
17 (“CEQA Guideline”), §§ 15126(d), 15126.2(d); 40 C.F.R. § 1508.8(b). Thus, Guideline section
18 15126.2(d) provides the following mandate for the content of an EIR:

19 Growth-Inducing Impact of the Proposed Project. Discuss the ways in
20 which the proposed project could foster economic or population
21 growth, or the construction of additional housing, either directly or
22 indirectly, in the surrounding environment. Included in this are
23 projects which would remove obstacles to population growth (a major
24 expansion of a waste water treatment plant might, for example, allow
25 for more construction in service areas.)

26 In determining whether a project may have a significant impact on the environment, the
27 agency must consider reasonably foreseeable indirect impacts. Guideline § 15064(d)(3).

28 If a direct physical change in the environment in turn causes another

1 change in the environment, then the other change is an indirect
2 physical change in the environment. For example, the construction of
3 a new sewage treatment plant may facilitate population growth in the
4 service area due to the increase in sewage treatment capacity and may
5 lead to an increase in air pollution.

6 Guideline § 15064(d)(2) (emphasis added.)

7 Similarly, NEPA requires an EIS to include a discussion of both direct and indirect effects of
8 the project, 40 C.F.R. § 1502.16(a)-(b), and defines indirect effects to include growth-inducing
9 impacts:

10 Indirect effects may include growth inducing effects and other effects
11 related to induced changes in the pattern of land use, population
12 density or growth rate, and related effects on air and water and other
13 natural systems, including ecosystems.

14 40 C.F.R. § 1508.8(b)

15 The court in City of Antioch v. City Council (1986) 187 Cal.App.3d 1325 considered these
16 effects with respect to a project consisting of construction of roadways and sewer facilities, which
17 was approved by a municipality without preparation of an EIR. The court concluded that such
18 anticipated effects required preparation of the EIR, despite their uncertainty: “[O]ur decision in this
19 case arises out of the realization that the sole reason to construct the road and sewer project is to
20 provide a catalyst for further development in the immediate area.” 187 Cal.App.3d at 1337; see also
21 Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144, 147 (EIR
22 required to evaluate growth inducing impacts from golf course project because it would induce
23 residential growth, despite fact that surrounding area was zoned agricultural, since zoning can
24 change); Friends of “B” Street v. City of Haywood (1980) 106 Cal.App.3d 988, 1003 (EIR/EIS
25 required for road construction project because project may accelerate conversion of single-family
26 homes to commercial or multi-family uses); City of Davis v. Coleman (9th Cir. 1975) 521 F.2d 661,
27 674-675 (EIR required for project constructing highway interchange in an agricultural area where
28 no connecting road currently exists because it will have growth-inducing effect).

1 Likewise, Appendix G to the CEQA Guidelines (the Environmental Checklist Form)
2 provides that growth inducement is a potential environmental impact that must be considered in an
3 EIR:

4 XII. POPULATION AND HOUSING. Would the project:

5 a) Induce substantial population growth in an area, either
6 directly (for example, by proposing new homes and businesses) or
7 indirectly (for example, through extension of roads or other
8 infrastructure)?

9 Guidelines, App. G, § XII(a).

10 III.

11 **THE PROPOSED TRANSFER IS GROWTH-**
12 **INDUCING IN SAN DIEGO COUNTY**

13 In the instant case, the project will have growth-inducing impacts because the transfer will
14 make additional water available to San Diego County, as well as making the available water secure
15 and reliable. However, the EIR/EIS concludes that there will be no growth-inducing impacts
16 because the project purportedly will not increase the amount of water delivered to the region. This
17 “analysis” is incorrect for at least two reasons. First, the transfer provides rights to an additional
18 200,000 acre feet annually (“afa”) that San Diego County would not otherwise have access to. As
19 stated by SDCWA General Manager Maureen Stapleton:

20 It would be a new supply for [SDCWA]. We have never
21 had a supply other than Metropolitan (Transcript pp. 2629, line
22 25 to 2630, line 2).

23 Second, the analysis ignores the crucial fact -- indeed, the stated purpose for the transfer --
24 that the project provides a secure, reliable source of water to sustain San Diego County’s projected
25 growth, reliability which is currently non-existent. This securing of a reliable source of water to
26 insure against drought situations, failed conservation programs or faster than expected growth, is
27 itself growth-inducing, even if the amount of water supplied to the region in normal years remains
28 constant.

1 **A. The Project Will Increase the Amount of Water Available to San Diego County**

2 The EIR/EIS bases its conclusion on the presumption that the project will not increase the
3 amount of water supplied to the SDCWA service area. There is no evidence, however, to support
4 this assumption. Currently, under normal conditions, SDCWA has the right to essentially import all
5 its needed water from MWD pursuant to the Metropolitan Water District Act (Water Code App. §
6 109 et seq.) and MWD’s Administrative Code (§ 4202.) When MWD’s supplies are inadequate,
7 SDCWA maintains a “preferential right” to a certain percentage, approximately 15%, of MWD’s
8 water supplies pursuant to section 135 of the Act.

9 The proposed project, however, adds to these supplies an extra 200,000 afa from the IID
10 transfer. (EIR, p. 2-35.)

11 These additional supplies are independent of SDCWA’s right to MWD water. As noted in
12 SDCWA’s 2000 Urban Water Management Plan, “under the exchange agreement with
13 Metropolitan, the Authority’s water acquired from IID will be treated as independently owned local
14 water in the same manner as independently owned local water supplies of other Metropolitan
15 member agencies.” (SDCWA 2000 Urban Water Management Plan p. 6-4 [NWF Exh. 5].) Neither
16 the proposed project, the MWD exchange agreement, nor any other project or agreement alters or
17 limits the amount of water SDCWA can obtain from MWD. As stated by SDCWA General
18 Manager Maureen Stapleton at the State Water Board hearing on May 28, 2002,

19 “There is no preclusion for asking for additional water, not
20 that I am aware of.” (Transcript p. 2631)

21 Accordingly, the 200,000 afa supplied by the IID transfer adds to the water supplies already
22 available to SDCWA, rather than supplanting a portion of its current supplies. The project
23 effectively increases SDCWA’s guaranteed water from 300,000 afa (its “firm supply” from MWD)
24 to 500,000 afa (its MWD firm supply plus the 200,000 afa from the transfer).

25 Thus, the project will substantially increase the amount of water available to San Diego
26 County to support and future growth. These additional water supplies will assist SDCWA in
27 meeting the increasing water demands of the region as it continues its rapid growth.

28 Ms. Stapleton has even testified that SDCWA would ask for more water from MWD for a

1 variety of reasons including prolonged drought which diminishes local supplies (Transcript p. 2631,
2 line 6-10); faster than expected economic expansion (Transcript p. 2631, lines 11-18); and a failure
3 of conservation efforts to meet established goals (Transcript p. 2631, lines 19-25 and p. 2632, line
4 1). In fact, in January 2001, SDCWA filed a lawsuit against MWD contending that it was entitled to
5 more water than it was currently afforded by its 15% preferential rights. SDCWA obviously wants
6 more water.

7 In essence, SDCWA going back to MWD for more water is not only possible but based upon
8 the historical and present day circumstances, very likely. This “going back to the well” option (or
9 crutch as one might call it), directly takes the pressure off the County to grow in a more water
10 efficient manner (i.e. avoiding urban sprawl) and allows its land-use decision-makers (city councils
11 and the County Board of Supervisors) to be casually concerned with water conservation.

12 As described by professional planner, Craig Jones, this project would enable the traditional
13 Southern California development pattern -- that is, land-extensive suburban sprawl -- to continue.
14 This type of development pattern consists primarily of “detached single-family homes expansive
15 land, graded pads and lots, separated and diffuse industrial parks, commercial centers, [and]
16 employment centers.” It uses more land and “necessarily requires a greater amount of water usage
17 per unit of development” than more compact land use patterns “because there is much more
18 landscaped area which requires artificial landscape irrigation systems primarily.” (Testimony of
19 Craig Jones, Transcript pp. 1969-1971.)

20 San Diego County is expected to grow from 2.94 million people in 2000 to over 3.85 million
21 in 2020. (EIR/EIS p. 5-37.) During this period, SDCWA anticipates the County’s water demands
22 to increase from 619,000 afa in 1999 to 813,000 afa in 2020, nearly a 25% increase. (NWF Exh. 5
23 p. 2-1.) Over the next 20 years, the county’s population is expected to increase by another 33% to
24 5.12 million in 2040. (EIR/EIS p. 5-37.)

25 Increased growth requires increased supplies of water. This long-term transfer of 200,000
26 afa makes available a significant additional source of water to serve that growth. According to
27 further evidence submitted by Craig Jones any increase in the amount of available water to an
28 urbanizing region is necessarily growth-inducing:

1 In southern California where water is an imported resource, it is
2 inherently true that in urbanizing areas, any increase in the available
3 quantity of, or improvement in the reliability of water, is growth-inducing.
4 While it may be deemed desirable to secure a more reliable water source,
5 it is at the same time inherent that this improved reliability encourages and
6 induces growth. This is historically obvious in the development history of
7 southern California. (NWF Exh. 3. p. 1)

8 The relationship between the proposed SDCWA/IID transfer and the region’s future growth
9 was recognized in a 1998 report by the San Diego Association of Governments (“SANDAG”)
10 entitled San Diego Regional Economic Prosperity Strategy. (NWF Exh. 6.) The report is intended
11 to determine and recommend particular strategies for the San Diego region “to strengthen our
12 existing industries, our emerging growth companies, and our universities and research and
13 development institutions that create new enterprises.” (NWF Exh. 6, p. 4.) One of the crucial
14 issues identified in the report was the availability of imported water, and SANDAG specified the
15 IID transfer as a critical element, concluding that it could “substantially increase our supply of
16 water.” (Id. at p. 55.) (Emphasis Added) The report further noted that imported water was “an
17 essential resource” to San Diego, and that “[i]t will continue to influence the long-term business
18 expansion and location decisions of our existing and emerging growth industries.” (Id. at p. 65.)
19 SANDAG further explained the importance of the agreement to such business decisions: “The ever-
20 present perception of a looming water shortage in the region would quickly evaporate with the
21 consummation of this agreement.” (Id. at p. 55.)

22 The contention by the project applicants, that there is no additional, significant capacity in
23 the existing MWD-SDCWA water conveyance system is irrelevant because the Water Authorities’
24 fundamental role is to build what is needed to deliver whatever increasing amounts of water are
25 deemed to be needed and available. (See Testimony of Maureen Stapleton, p. 2633, lines 13-25
26 and p. 2634, lines 1-2). The argument is roughly equivalent to saying let’s ignore the impact of
27 more people coming into the region because we don’t currently have the housing to shelter them.

28 SDCWA is very clear that it will expand its infrastructure to handle whatever capacity it

1 needs, as long as the water supplies are available to be transferred. In this regard, the QSA EIR/EIS
2 observes that SDCWA is currently conducting preparatory studies for a possible direct conveyance
3 system from the Imperial Valley to the San Diego region. (QSA EIR/EIS, p. 6-9; see also
4 Testimony of Larry Purcell, Transcript p. 1132-1133) This system would permit SDCWA to
5 directly convey the transfer water from Imperial Valley using its own pipelines or canals rather than
6 using MWD's water lines. This would avoid any alleged limitation on imported water based upon
7 the capacity of MWD's conveyance systems, to the extent there is any. Importantly, SDCWA's
8 ability to use MWD's facilities to import the transfer water expires after thirty years, the term of its
9 Agreement with MWD, well short of the potential 75-year term of the transfer. .

10 Moreover, Ms. Stapleton has admitted that even current raw water lines are at 80-85%
11 capacity (Transcript p. 2634, lines 15-18). If they are at 80% with an existing flow of 400 afa, there
12 is currently room for an additional 80,000 afa to be received from MWD. This quantity is enough to
13 serve 640,000 new residents, more than one half of the existing City of San Diego population!

14 **B. The Project is Growth-Inducing Because it Secures a Reliable Source of Water**

15 In addition to creating an additional source of water, the project will have further growth-
16 inducing impacts as a result of SDCWA's securing of a reliable source of water. Craig Jones has
17 stated that, regardless of the amount of water available to an urbanizing region like San Diego, the
18 reliability of that water source is crucial. According to Mr. Jones, the securing of a more reliable
19 source of water inherently encourages and induces growth, including affecting the land-use
20 decision-making of cities and counties. (NWF Exh. 3, pp. 1-2; Transcript pp. 1969-1971.) Mr.
21 Jones is supported on the issue of economic growth by Ms. Stapleton, the General Manager for
22 SDCWA:

23 MR. JOHNSON: I think you said earlier it was reliability of the water supply
24 [that] was critical to sustained economic development in the county?

25 MS. STAPLETON: Yes. (Transcript, p. 2629, lines 13-17; see
26 also p. 421.)

27 **1. SDCWA's Reliable Water Supplies are Only a Fraction of Those Needed to**
28 **Meet Existing and Future Needs**

1 Crucial to understanding the impact on potential growth is an understanding of SDCWA's
2 current unreliable supply of water and that supply's inability to meet the current and future
3 demands for water within its service area.

4 The demand for water within SDCWA's service area in 2000 was 695,000 afa and for the
5 years 1995-2000 averaged approximately 622,000 afa. (NWF Exh. 5, p. 2-3.) However, given the
6 inadequate local water supplies, SDCWA has historically imported 75-95% of its needed water
7 supplies from outside sources. (Id. p. 3-1.) MWD is the sole source of imported water for
8 SDCWA. (Id.)

9 MWD has an obligation to supply water to SDCWA pursuant to the Metropolitan Water
10 Act. However, the amount of water to which SDCWA is entitled, or guaranteed, from MWD is
11 fixed pursuant to SDCWA's preferential rights under section 135 of the Act. SDCWA's
12 preferential right to MWD's supply is less than 15%.¹ The impact of this is noted by SDCWA in its
13 2000 Urban Water Management Plan:

14 At any time under preferential rights rules, Metropolitan could
15 allocate water without regard to historic water use or dependence on
16 Metropolitan. This could leave [SDCWA] short by more than half of
17 its water supply in a hypothetical 20 percent shortage.

18 (NWF Exh. 5 at p. 3-14 [emphasis added].)

19 This situation is exacerbated by the relatively small amount of water which MWD can
20 guarantee its member agencies will be available in any given year, i.e., its "firm supply." MWD's
21 current "firm supply" is 2.1 million afa, which amount would need to be apportioned among all of
22 MWD's 27 member agencies, including SDCWA, the City of Los Angeles and the Metropolitan
23 Water District of Orange County. (Id. at pp. 3-5 to 3-6.) Pursuant to SDCWA's preferential rights,
24 it is entitled to less than 15% of this firm supply, or slightly more than 300,000 afa, whereas its
25 water needs in 2000 were 695,000 afa (75-95% would need to be imported from MWD) and its
26

27 ¹ SDCWA disputes MWD's contention that its preferential right is 15%, and contends it
28 should be somewhat more, about 22%. In January 2001, SDCWA filed a lawsuit against MWD on
this issue. The case is currently on appeal.

1 projected 2020 demand of 813,000 afa. (Id. at pp. 3-4, 2-3, 2-5.)

2 Although MWD has been able to supply more water than its “firm supply” (due to, for
3 example, declarations of surplus water in the Colorado River by the Department of Interior),
4 SDCWA is nevertheless faced with the prospect of a guaranteed supply of imported water
5 dramatically short of its current and future needs:

6 Until the preferential rights issue is resolved, [SDCWA] must assume
7 for planning purposes that its firm water supply from Metropolitan is
8 limited to 303,630 AF, representing its existing preferential right to
9 water under the Metropolitan Act.

10 (Id. at p. 3-15.)

11 Moreover, there is no guarantee that MWD’s current firm supply will continue at that level.
12 In fact, it may decrease significantly in the near future. The Quantification Settlement Agreement
13 (“QSA”) between IID, MWD and the Coachella Valley Water District (“CVWD”) regarding
14 reallocation of these agencies’ rights to Colorado River water, has not been approved. If the QSA
15 is not approved, the result will be that MWD may lose 650,00 to 730,000 afa of its supply from the
16 Colorado River. (EIR for the QSA, “No Project Alternative” description; Testimony of Maureen
17 Stapleton, Transcript p. 415.) This will result in a reduction of MWD’s “firm supply” of water
18 from 2.1 million afa to approximately 1.4 million afa. SDCWA’s preferential right to MWD’s
19 water, then, would reduce from approximately 300,000 to approximately 200,000 afa.

20 Accordingly, SDCWA’s reliable, guaranteed supply of water is significantly short of the
21 current and future demand within its service area. This potential shortfall has substantial
22 ramifications for the growth potential within San Diego County.

23 **2. SDCWA Plans to Resolve its Shortage of Reliable Water Supplies**
24 **to Facilitate and Induce Growth**

25 SDCWA has itself acknowledged that if it is unable to increase its guaranteed supply of
26 water, there will be potentially drastic impacts upon development within the county. In January
27 2001, SDCWA filed a lawsuit against MWD challenging MWD’s calculation of SDCWA’s
28 preferential rights. SDCWA claimed they should be higher than its approximate 15%. In its

1 complaint, verified under penalty of perjury by its General Manager, SDCWA stated that MWD’s
2 failure to increase its preferential rights (i.e., increase the amount of reliable water supplies) “is
3 chilling needed water supply management and planning efforts in Southern California, generally,
4 and in the service territory of SDCWA specifically.” (SDCWA v. MWD, et al. Complaint [NWF
5 Exh. 7] p. 20 [emphasis added].)

6 SDCWA further stated that its failure to obtain increased amounts of reliable water by way
7 of an increased calculation of preferential rights:

8 would place almost fifty percent (50%) of SDCWA’s water supply at
9 risk, and would cause SDCWA irreparable harm in that it would
10 destroy business confidence, undermine investment, translate directly
11 into lost production, reduce income, cause lost jobs and result in a
12 weakening economy in San Diego County.

13 (Id. at p. 28 [emphasis added].)

14 As acknowledged by SDCWA, a reliable source of water supply is essential to
15 accommodate the growth planned for the San Diego County. Absent a reliable source of water,
16 growth in the region would be slowed or stalled as local businesses make decisions whether to
17 expand or stay within the region and other businesses decide whether to move into the County.

18 (NWF Exh. 3. p. 1-2)

19 Water is especially important for the support and expansion of
20 industrial land use, including the most contemporary growth sectors of
21 industry, high-tech and biotech. Industrial development is fundamental
22 to all other urban growth and development. (NWF Exh.3. p. 1-2)

23 For example, the biotechnology industry is one of San Diego’s most important and fastest
24 growing industries, and it needs a reliable supply of water to survive and grow. (Testimony of Craig
25 Jones, Transcript, p.1975-1976.)² In a September 1999 public hearing before CALFED regarding
26 its Bay-Delta program, Alan Smith of Biocom/San Diego, the trade association for the life science

27
28 ² The transcript of the proceedings mistakenly attributes the testimony on pages 1975 - 1976
to NWF’s attorney, Mr. Johnson. In fact, this testimony was given by NWF’s expert Craig Jones.

1 industry in San Diego County, made the following remarks regarding that industry's need for
2 reliability in its water sources:

3 If life science companies are going to prosper, grow, and survive in
4 California, we need assurance that there will be a consistent quantity
5 of water, Monday through Friday, winter, spring, summer and fall.

6 IDAK [sic] Pharmaceutical, for example, has been contemplating for
7 some time a manufacturing plant that would jump them from 65,000
8 gallons of water a day as an R and D to 750,000 gallons a day as a
9 manufacturing facility.

10 (CALFED 9/1/99 Transcript [NWF Exh. 8], p. 80; see also NWF Exh. 3.)

11 Mr. Smith's comments were echoed by those of Don Parent, the chairman of the board of
12 the East (San Diego) County Development Council. Mr. Smith emphasized the importance of
13 reliability of water supplies to "high-tech and biotech firms in our area. They contribute billions to
14 our regional economy and will suffer financially unless CALFED makes significant improvements
15 in its program." (NWF Exh. 9, p. 70; see also NWF Exh. 3.)

16 Likewise, a reliable source of water is necessary to support the projected increased
17 population in the region. As noted by the project's EIR/EIS, all of SANDAG's and SCAG's
18 population forecasts "are based on the assumption that the necessary water supplies would continue
19 to be available to the region into the future." (EIR/EIS p. 5-37, see also Transcript pp. 1965-1966.)
20 This assumption, however, simply cannot be made given the current uncertainty of SDCWA's
21 water supplies.

22 It is precisely for this reason that SDCWA is seeking this long-term transfer of water: to
23 obtain an increased amount of secure, reliable water supply to support the growth planned for the
24 region. The Notice of Intent to Prepare an EIR/EIS for this project explicitly stated that, by this
25 project:

26 SDCWA seeks to acquire an independent, reliable alternate long-
27 term water supply to provide drought protection and to accommodate
28 current and projected demand for municipal, domestic, and agricultural

1 water uses.” (64 Fed. Reg. 186, p. 52103 [emphasis added].)

2 Moreover, in its 2000 Urban Water Management Plan, SDCWA notes that:

3 [W]ater transfers (like the IID-SDCWA transfer) have become one
4 of its “greatest potential resources for meeting future needs.” (NWF Exh.
5 5, p. 3-16.)

6 SDCWA further explains that its objective is “to secure firm supplies to meet dry year
7 demands. At this time we rely on a supply from Metropolitan which, for quantities above our
8 preferential right, is not considered reliable.” (Id. p. 5-3.) “The Authority-IID Water Conservation
9 and Transfer Agreement will increase the reliability of the Authority’s future imported water
10 supplies.” (Id. p. 3-16.)

11 SDCWA explains the benefits of the project and the increased reliability as follows:

12 During dry years, when water availability is low, the
13 conserved water will be transferred under IID’s Colorado River
14 rights, which are among the most senior in the Lower Colorado River
15 Basin. Without the protection of these rights, the Authority could
16 suffer delivery cutbacks.

17 (Id. p. 3-17.)

18 In addition, the supplies from IID, though delivered by MWD, will be treated identically to
19 local supplies independently owned by SDCWA. (Id. p. 6-4.) For all these reasons, then Secretary
20 of the Interior Bruce Babbitt publicly stated of the project:

21 For San Diego, it means your growth future is assured
22 if you use water wisely. (S.D. Union-Tribune, 1/17/01
23 [NWF Exh. 9, p. 2].)

24 **3. SDCWA Now Needs Reliable Water Supplies to Comply with Recent State**
25 **Legislation Requiring Assurances of Adequate Water Supplies for New**
26 **Development**

27 Moreover, the need for assured, reliable sources of water to support development and
28 growth is not merely theoretical or abstract; it is now the law. In 2001, the California Legislature

1 passed Senate Bill 221, the relevant portions of which are codified at Government Code § 66473.7.
2 Senate Bill 221 prohibits approval of developments of 500 units or more unless certain assurances
3 can be made about the availability of sufficient water supplies to support such development. For
4 each such project, the applicable public water system must make a written verification that
5 sufficient water supplies exist to support the project, and that verification must be supported by
6 substantial evidence. Gov't Code § 66473.7(b)-(c). "Sufficient water supply" is defined by the
7 statute to be:

8 [T]he total water supplies available during normal, single-dry, and
9 multiple-dry years within a 20-year projection that will meet the
10 projected demand associated with the proposed subdivision, in
11 addition to existing and planned future uses, including, but not
12 limited to, agricultural and industrial uses.

13 Gov't Code § 66473.7(a)(2).

14 The determination of the availability of sufficient water supply must take into account
15 factors such as the historic availability of water supplies over the last 20 years and the amount of
16 water that the water agency "can reasonably rely on receiving from other water supply project." *Id.*

17 The basis for Senate Bill 221 was the realization that water supplies are insufficient to
18 support the projected growth in California, and that new development should not proceed unless
19 and until a sufficient water supply was assured. The bill's legislative history notes this basis:

20 California's increasing population and limited water supply
21 virtually guarantee a future of insufficient water supply to support
22 California's forecasted growth. While this bill provides a much
23 needed link between the planning decisions made by cities and
24 counties and the amount of water available for development, it does
25 not address the state's fundamental need for additional water
26 supplies.

27 (Sen. Ag. & Water Resources Comm., 4/24/01 [NWF Exh. 10], p. 4 [emphasis added].)

28 The legislative history is also replete with evidence linking the need for additional, reliable

1 water supplies and the ability to accommodate planned growth, for example:

2 Under present conditions, the [State Water Project] and the
3 [Central Valley Project] currently have greater demands than they are
4 able to meet. According to the Department of Finance, California's
5 population will double by 2040. Supporters [of the bill] contend
6 that approving new development faster than new water supplies are
7 developed puts existing customers at risk during future droughts.
8 Supporters also maintain that the bill will encourage the development
9 of new supplies at the local level in conjunction with the reality of
10 growth needs in the region.

11 (Assem. Comm. On Water, Parks & Wildlife, 7/10/01 [NWF Exh. 11], p. 6 [emphasis added].)

12 According to the sponsor, East Bay Municipal Utility District,
13 forecasters expect between now and 2020, California is expected to
14 add over 15 million more residents, and the state will face a major
15 challenge to ensure adequate quantities of safe and clean water to
16 sustain the population, the environment, and the variety of industries
17 and businesses of the state. They contend that the state's continued
18 economic prosperity depends largely on its ability to retain a diverse
19 industrial economy, including a strong manufacturing component;
20 and that many industries, particularly manufacturing firms, rely
21 heavily upon reliable, quality water supplies to remain competitive.
22 They feel that this bill is essential in the early planning in improving
23 linkages between land use and water supply and land use planning as
24 new development projects move through the subdivision process.

25 (Sen. Rules Comm., Senate Floor Analyses, 9/12/01 [NWF Exh. 12], pp. 6-7 [emphasis added].)

26 Absent a reliable source of water in excess of what SDCWA currently has from MWD,
27 SDCWA cannot comply with this statute for large developments within San Diego County.
28 SDCWA essentially acknowledged this in its verified complaint against MWD. It stated it needed a

1 Court judgment declaring that its preferential right to MWD water was greater than its current 15%:

2 [S]o that SDCWA can responsibly plan for its future water supply,
3 make required representations to local and state governmental
4 agencies as the reliability of its existing supply of water, and/ore seek
5 alternative supplemental sources of water supply if necessary to
6 augment its existing supply of water. SDCWA is currently unable to
7 fulfill its duties to the citizens and businesses of San Diego County
8 because it is unable to determine with any certainty how Metropolitan
9 will determine or be required to determine its preferential rights under
10 Section 135.

11 (SDCWA v. MWD Complaint p. 25.)

12 Accordingly, this transfer project is a crucial step in SDCWA’s ability to secure reliable
13 water sources to support the growth planned for San Diego County. The transfer, therefore, by
14 securing 200,000-300,000 afa of secure, reliable water, will necessarily accommodate and induce
15 growth within the region, contrary to the conclusions in the EIR/EIS.

16 **C. The EIR/EIS Incorrectly Finds no Growth-Inducement on the Ground**
17 **that the Water Supplied Will be Used to Serve Existing Demand and to**
18 **Support Growth Already Planned**

19 The EIR/EIS’s analysis of the growth inducement is further based upon the additional
20 argument that the water provided to SDCWA by the project will only be used to accommodate
21 growth in the region that has already been projected. This circular reasoning is both factually and
22 legally flawed.

23 First, this analysis makes the mistake of judging the impacts of the project against the
24 conditions envisioned by future projections rather than the conditions currently existing on the
25 ground. CEQA, however, requires that a project’s impacts be measured against the actually
26 existing conditions, not hypothetical conditions envisioned in a General Plan or other projections.

27 Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 190.

28 Furthermore, the argument incorrectly assumes that the projected growth has been planned

1 for. It has not. Rather, the projections relied upon in the EIR/EIS are merely SANDAG's
2 population projections for 2020. The EIR/EIS does not rely upon the growth planned by San
3 Diego County's General Plan. Indeed, the County's General Plan 2020 Update is not even near
4 completion or approval. Contrary to the implication in the EIR/EIS, the growth projections which
5 will be served by these additional water supplies have not been comprehensively planned for.

6 In addition, the analysis is based upon transparent, circular reasoning. The EIR/EIS
7 explicitly acknowledges that the growth projections relied upon in the EIR/EIS "are based on the
8 assumption that the necessary water supplies would continue to be available to the region into the
9 future." (EIR/EIS p. 5-37.) Thus, these projections will not be met if the necessary water supplies
10 are not available. The entire purpose of this project is to ensure that this condition is met, by
11 obtaining additional and more reliable water supplies for the future.

12 Likewise, the EIR/EIS acknowledges that its growth projections "do not assume significant
13 seasonal or year-to-year variability in the water supply. Rather, they are predicated on an assumed
14 consistency in water quantity and quality." (EIR/EIS p. 5-39 to 5-40.) Again, the project is
15 specifically designed to insure against the potential for "seasonal or year-to-year variability in the
16 water supply" and to insure a consistent water quantity. In other words, this project enables the
17 growth projections cited in the EIR/EIS. The EIR/EIS' circular reasoning cannot support its
18 conclusion that this project will not be growth-inducing. Perhaps the best way to summarize the
19 issue is as follows: Without the project, growth could stop all together. With the project, growth
20 continues.

21 Lastly, the Final EIR/EIS attempts to justify its no growth inducement conclusion by
22 arguing that the water provided by the project does not induce or accommodate future growth
23 because it is necessary to meet existing water demands within the region. (Final EIR/EIS pp. 3-98
24 to 3-99.) This analysis is fundamentally flawed. First, the serving of both existing and future needs
25 is not mutually exclusive. This is not a short-term transfer; its duration is 75 years. This reasoning
26 is also contradicted by the numerous statements by SDCWA that the purpose of the project is to
27 provide a reliable source of water to meet future demands. For example, Ms. Stapleton, SDCWA's
28 General Manager testified the project was intended to serve future growth:

1 MS. STAPLETON: Yes, we do anticipate future growth in our region.

2 MR. ROSSMANN: This transfer is intended to, pursuant that application, to
3 accommodate that future growth?

4 MS. STAPLETON: The water coming from Imperial we believe is
5 replacement water. The Authority does need independent reliable alternative, long-
6 term supply for ultimately the growth that we will experience in the next decades,
7 yes.

8 (Testimony of Maureen Stapleton, Transcript pp. 420- 421 [emphasis added.])

9 Moreover, the analysis ignores the obvious relationship between the region's ability to serve
10 existing water demands and its prospects for growth. If the San Diego region does not have
11 sufficient water to meet existing demands, this will certainly have a negative impact on growth
12 within the region. Thus, the fact (conceded by the applicants) that this project is necessary to serve
13 existing water demands mandates the conclusion that it has growth-inducing impacts.

14 Also, endemic throughout the applicants' analysis is the incorrect assumption that growth
15 within the region is a constant and that this project therefore cannot have an impact on such growth.
16 In fact, regional growth is a variable in the analysis. It is impacted by several factors, not least of
17 which is the availability and reliability of water supplies for living, recreation, commerce and
18 industry. It is just these assurances which this project provides, thereby encouraging growth.

19 IV

20 **GROWTH INDUCEMENT WILL UNREASONABLY IMPACT FISH,** 21 **WILDLIFE AND OTHER INSTREAM BENEFICIAL USES OF WATER**

22 **A. Urban Sprawl is the Single Largest Threat to Fish and Wildlife**

23 Secure and/or increased water supplies will induce and support the expansion of business in
24 the County which will create more jobs. These jobs will bring in more people who then require
25 more housing and services, which in turn will create more jobs.

26 Historic landuse patterns of urban sprawl in San Diego County are expected by the San
27 Diego Association of Governments, the SDCWA and most experts to continue. These sprawl
28 patterns include greater, unnecessary and ongoing consumption of existing land and habitat for

1 more roads, houses, commercial structures and government facilities. Not surprisingly, the National
2 Wildlife Federation and a large number of other respected institutions have recognized that sprawl
3 is a clear and present danger to threatened and endangered species within the state.

4 In its February 2001 White Paper, entitled Paving Paradise: Sprawl's Impact on Wildlife
5 and Wild Places in California, the National Wildlife Federation reaches the following conclusion:

6 We find that sprawl - - low density, automobile-dependent
7 development into the natural areas outside of cities and towns - is the
8 leading cause of species imperilment in the state. Outranking all other
9 factors, sprawl imperils 188 of the 286 California species listed as
10 threatened or endangered under the federal Endangered Species Act,
11 or 66 percent of the state's listed species. (NWF Exh. 13, p. 1, ¶ 1).

12 In evaluating the 286 Federally listed species in California, NWF found that the second and
13 third ranking causes of species imperilment were non-native species and outdoor recreation. (Id.,
14 ¶2.) Modified fire regimes, pollution and genetic problems (i.e. loss of genetic variability) are also
15 high on the list of factors contributing to the imperilment of a large number of Federally listed
16 species in California. (Id., p.11)

17 The report establishes that sprawl patterns require more land per capita than infill
18 development and in doing so destroys forest, wetlands and open space. Between 1970 and 1990
19 the Los Angeles area developed by 300% while it's population grew only 45% over the same time.
20 (Id. p.14, ¶ 1) This pattern is being repeated in San Diego County. In Dr. Michel's comparison of
21 land consumption in Tijuana and San Diego, she states as follows:

22 Hence, San Diego's urban consumption of land is two times
23 greater than that of Tijuana. In fact the trend towards low density urban
24 sprawl will continue in San Diego. According to the 1999 San Diego
25 Association of Governments City/County Forecast, between 1995 and
26 2020, low density single family housing will increase by 201%. Multiple
27 family housing will increase 42%. (NWF Exh. 14, p.16)

28 In her testimony before this Board, Maureen Stapleton, General Manager of the San Diego

1 County Water Authority was asked about the 1999 SANDAG forecast:

2 MR. JOHNSON: Based on your experience and your job and being involved in these
3 various growth groups . . . would [that] sound to be about right?

4 MS. STAPLETON: Yes, it would.

5 (Transcript p. 2644, line 23 to p. 2645, line 1.)

6 There is almost unanimous agreement that San Diego County (if it gets the water) has been
7 and will continue to grow and develop in urban sprawl patterns. On the other hand, if projects like
8 the proposed water transfer from the Imperial Valley mitigate the impact of new and reliable water
9 supplies by requiring that the water not be used for urban sprawl, the historic mistakes of San Diego
10 planners and decision-makers can be avoided.

11 In his testimony before this Board, professional planner Craig Jones addressed the issue of
12 water supplies and land-use decision-making:

13 Without this project there would be lesser quantity of water
14 available to San Diego Water County Authority and thus to the various
15 jurisdictions which would view and approve development in San Diego
16 County. And it would [mean] less reliable water flow to support urban
17 growth and development.

18 Now this would create powerful incentives for land-use decision-
19 making bodies, that is the cities in San Diego County and the County, to
20 plan and zone for patterns of growth which would be less land extensive
21 and more water conservant. Cities and counties are also very responsive to
22 arguments of the private sector to support and to promote private sector
23 interest which include growth development and economic well-being,
24 economic expansion. (Transcript p. 1971, lines 1-14.) (Emphasis Added)

25 An obvious alternative to not increasing water supplies to the region by denying the
26 application for the transfer project, is to require that the water coming from the Imperial Valley not
27 be used to support urban sprawl. New development, supported by the new water should be sited
28 within existing communities. It should not be characterized by large lots which destroy, degrade

1 and fragment habitat and which are also highly water intensive. Development in rural areas also
2 leads to habitat fragmentation, a major threat to the species that occupy and otherwise use the land.

3 As stated by NWF in “Paving Paradise:

4 Sprawl fragments habitat when developers build in the middle of
5 undisturbed habitat. Roads block migration routes and cut off
6 wildlife from food sources. Many species either avoid roads, like
7 the bald eagle, or are unable to cross roads, like the desert tortoise.
8 Thus habitat fragments take on the characteristics of island
9 ecosystems. Smaller habitat islands generally have less species
10 diversity and are more vulnerable to extinctions due to disease,
11 floods, and other disturbances. To keep small fragments of habitat
12 viable it is important that migration corridors exist.

13 Without adequate continuous habitat a population of large,
14 wide ranging animals, such as the Santa Ana mountain lion ... will
15 eventually disappear.

16 No matter how one looks at the phenomena, urban sprawl is bad for fish and wildlife.
17 Unilaterally providing more and/or secure water to the San Diego Region will unnecessarily and
18 recklessly facilitate and induce new urban sprawl.

19 **B. Water Quality Related Impacts to Fish and Wildlife Require Specific Analysis**
20 **and Mitigation**

21 In her written testimony, NWF Exh. 14, Dr. Suzanne Michel discusses several water related
22 impacts from urban growth: expected increases in waste water as a result of continued growth (pp.
23 13 -15); negative impacts on surface water quality as a result of urban growth (pp. 17 - 19); and
24 increased likelihood of water supply contamination as a result of on-going growth (pp. 19 - 25).

25 The NWF Paving Paradise report includes the following findings related to water and
26 habitat:

27 Even when aquatic habitats are not totally destroyed by sprawl,
28 they suffer enormously. These habitats are directly impact by sprawl

1 when rivers are channelized for flood control, or streams are
2 covered or diverted by roads or building. Sprawl directly affects the
3 aquatic habitat by removing trees from riparian and coastal habitats,
4 adding to erosion and siltation, and increasing impervious surface.

5 The report goes on to state:

6 The Environmental Protection Agency estimates that urban
7 runoff is directly responsible for up to two-thirds of coastal water
8 pollution. In undeveloped areas, precipitation is more likely to be
9 absorbed into the ground, enabling it to travel more slowly than surface
10 Runoff and to be cleansed of contaminants. Precipitation that falls onto
11 impervious surfaces such as roads, parking lots and driveways travels
12 over land faster and does not have the benefit of filtration through soils.

13 The report further notes:

14 Precipitation also carries with it solids and sediments that
15 enter waterways without the benefit of filtration. By adding pavement
16 and disrupting the natural filtering process, sprawl harms rivers, lakes
17 and wetlands, which must absorb great intensities of increasingly polluted
18 runoff.(NWF Exh. 13, p. 15)

19 Even San Diego County Water Authority General Manager Maureen Stapleton has
20 acknowledged the irrefutable relationship between water supplies and impacts on fish that live in
21 streams in the San Diego region, by stating that a decrease in the amount of run-off could adversely
22 affect the fish in those streams. (Stapleton Rebuttal Declaration p. 5.)

23 The direct connection between water supplies and fish and wildlife in the region cannot be
24 seriously denied, yet amazingly, the EIR/EIS preparers have ignored the obvious impacts of the
25 transfer project and therefore have failed to evaluate how to avoid or mitigate them.

26 The following series of questions to Ms. Stapleton emphasizes the complete absence of
27 analysis by any responsible government agency of the transfer project's impacts directly related to
28 water resources:

1 MR. JOHNSON: . . . And has the Water Authority or anyone to your knowledge
2 studied what this growth will be in terms of increasing runoff from
3 land that heretofore [was] able to absorb and filter the water that was
4 hitting the surface?

5 MS. STAPLETON: The Water Authority has not done that study.

6 MR. JOHNSON: Has SANDAG, to your knowledge, done that study?

7 MS. STAPLETON: I am not aware of it.

8 MR. JOHNSON: Has anybody attempted to quantify the amount of pollutants that
9 would be increased in the water systems off the coast in San Diego
10 County as a result of that growth?

11 MS. STAPLETON: I don't know.

12 * * *

13 MR. JOHNSON: In terms of the impervious surfaces, they also effect ground water
14 recharge; is that correct?

15 MS. STAPLETON: If there's an aquifer under that specific area, correct.

16 Mr. JOHNSON: Have you or SANDAG done any studies to see whether these future
17 growth patterns could potentially affect groundwater recharge for
18 aquifers that you are relying on or might rely on in the future for
19 waters supplies?

20 MS. STAPLETON: To my knowledge, we have not done any studies, and I am not aware
21 of what SANDAG has or has not done. (Transcript pp. 2651-2652.)

22 During the Board hearings, Dr. Suzanne Michel discussed the relationship between water
23 quality and fish and wildlife:

24 DR. MICHEL: On Page 18 of my document I show the increase of urban pollutant
25 runoff in Southern California as done by forecasting models to the
26 Southern California Coastal Water Research Project. Basically,
27 copper, which is lethal to all aquatic animals, in metric tons was 18
28 tons of copper deposited in our watersheds. By 1995 it was 88 tons, a

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389 percent change. So we are seeing increasing amounts of pollution deposited due to nonpoint source pollution.

MR. JOHNSON: The nonpoint source pollution is coming from what?

Dr. MICHEL: It is coming from urban land use activities, primarily.

* * *

MR. JOHNSON: What affect does that type of pollution have on fish and related aquatic species, plants species, et cetera?

DR. MICHEL: Basically, if you have protected area, as we have in the Multiple Species Conservation program, you can't stop the storm water and pollution entering that protected area. Wildlife, aquatic and land based all need access to clean water for healthy, biological and reproductive systems.

One way that we test is there is good water quality, which most of the people at the State Board know, is look at aquatic bugs, what we call macro invertebrates. Certain macro invertebrates are pollution tolerant; certain macro invertebrates are not pollution tolerant.

* * *

Also particular vegetation species, like the California Sycamore is very sensitive to pollutants. Willows, though, like that, they like pollutants. They gobble it up. So what you will have is a loss of biodiversity in there.

In sum, there is a clear link between water quality and fish and wildlife health which must be addressed through appropriate mitigation measures if the transfer project is to go forward.

V

CONCLUSION

The San Diego region, like the Los Angeles region, has always been and always will be heavily dependant upon imported water. Both areas typically receive a mere 9-10 inches of rain a

1 year. Manifestly, more water, and/or guaranteed water allows and induces more growth. There is no
2 more fundamental causal connection to be found anywhere in nature.

3 The proposed water transfer, which is unprecedented in size, will guarantee water to San
4 Diego County over the next 75 years and will have profound impacts on the future of the fish and
5 wildlife in the region, as well as on the future of the human population.

6 From the standpoint of the National Wildlife Federation, there is nothing wrong with the
7 region securing more water and pursuing continued growth. However the growth must be planned
8 and focused in a way that respects the environmental resources of the region.

9 To date, urban sprawl patterns have been perpetuated in the County of San Diego, and
10 absent some fundamental change in planning policies and practices, they will continue through
11 2020 and beyond. The proposed water transfer represents perhaps the single most profound and far-
12 reaching opportunity yet presented to decision-makers to directly link increased water supplies
13 with conditions that prohibit the use of the water to facilitate and promote urban-sprawl style
14 development. The inevitable unreasonable harm to fish and wildlife and other instream beneficial
15 uses of water requires that the project as proposed be denied, or alternatively be remanded to the
16 appropriate agencies to conduct comprehensive environmental studies and impose appropriate
17 mitigation.

18 Finally we close with the following excerpt from Exhibit 14, p. 16, the Written Testimony
19 of Dr. Suzanne Michel:

20 According to document analysis of local newspapers and
21 economic development publications, San Diego's local political and
22 business leaders support the notion to use imported water from the
23 IID-SDCWA water transfers to build more homes, and high
24 tech/tourism based economies (See for example: Editorial "Securing
25 Water" *San Diego Union Tribune*, August 14, 2001 at B8; City of
26 San Diego 1999; San Diego Association of Governments 1999; San
27 Diego Dialogue 1999; Editorial "Working for Water," *San Diego*
28 *Union Tribune*, September 4, 1998). In terms of the Imperial

1 Irrigation District (IID)-San Diego County Water Authority
2 transfers, a staff member of the State Water Resources Control
3 Board states that San Diego's politicians intend to build new homes
4 with the IID water.(Emphasis added.)

5
6 Dated: July 11, 2002

Respectfully submitted,

JOHNSON & CROSS LLP

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8 [signed]
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7

8 **STATE WATER RESOURCES CONTROL BOARD**

9 **STATE OF CALIFORNIA**

10

In re Amended Joint Petition of the Imperial)
11 Irrigation District and the San Diego County)
Water Authority for Approval of a Long-Term)
12 Transfer of Conserved Water Pursuant to an)
Agreement between IID and SDCWA.)
13 _____)
14 _____)

APPLICATION NO. 7482
IID/SDCWB, WATER TRANSFER
HEARING, PHASE II
CLOSING ARGUMENTS/ POST TRIAL
BRIEF SUBMITTED BY THE
NATIONAL WILDLIFE FEDERATION

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