



October 24, 2002

Victoria Whitney, Program Manager  
Hearings and Special Projects Section  
Division of Water Rights  
California State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

Dear Ms. Whitney:

On behalf of the Imperial County Air Pollution Control District ("ICAPCD"), I am submitting the following comments regarding the draft order addressing Imperial Irrigation District's ("IID") and the San Diego Water Authority's ("SDCWA") amended joint petition to transfer conserved water under Permit No. 7643. In addition to these comments, ICAPCD intends to present oral comments and be available for the Board's questions at the hearing scheduled for October 28, 2002.

Based on our understanding of the record of these proceedings, along with our review of the initial draft order and the recent amended draft order, ICAPCD has serious concerns regarding the Board's approach to air quality impacts. Moreover, the ICAPCD strongly objects to the proposed methodology for addressing the potential air quality impacts in the draft order.

The order fails to adequately recognize the expertise and appropriate regulatory role of the ICAPCD when it comes to air quality impacts in Imperial County. As recognized in Section 6.3.8.1 of the most recent draft of the proposed order, and as advanced by the County of Imperial in its scoping comments on the IID transfer Environmental Impact Report ("EIR") and its case-in-chief during the Board's hearings, ICAPCD is the lead agency for the regulation of air pollution in Imperial County. Thus, there should be no statement or implication in the proposed order that someone other than the ICAPCD would be making the final determination with respect to significant air pollution control impacts or mitigation measures in the county. In addition, the proposed order should provide a mechanism to fund the appropriate ICAPCD activity relating to such determinations.

Thus, the order that the Board finally adopts should contain, at a minimum, the following elements: 1) clear and unambiguous recognition of ICAPCD's lead role in addressing any adverse air pollution control impacts caused by the activities that will result from the proposed order; 2) a requirement for funding by IID for any reasonable efforts that ICAPCD may need to undertake as a result of the proposed order; and 3) a more appropriate description of the air

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quality in Imperial County at this time (in particular, greater and certain recognition of the potentially harmful conditions presented by airborne particulate matter in the Imperial Valley), and the significant likelihood of the exacerbation of those conditions as the activities presumed to take place under the proposed order are implemented. Each of these elements is addressed below.

First, despite the Board's good intentions to address air quality, the proposed order trespasses on the proper authority of the ICAPCD. For instance, when addressing the feasibility and mitigation of anticipated adverse air quality scenarios related to the retreating shoreline of the Salton Sea, the proposed order currently "... delegates to the District Chief the authority to determine, in consultation with the ICAPCD and California Air Resources Board, whether any mitigation measure identified ... is feasible." Also, any mitigation measure to be considered must first meet a four-step plan contained in Section 6.3.8.2 of the proposed order. The ICAPCD respectfully suggests that it should not be subordinated to the SWRCB with respect to any determination regarding the appropriate mitigation of an air pollution control impact. In fact, the ICAPCD requests a thorough review of the proposed order by SWRCB with an eye toward ensuring that all regulation of air quality impacts caused by the implementation of the proposed order be subject to the appropriate delegation of air quality control authority to the ICAPCD.

Second, the Board's order must consider an appropriate funding mechanism to support ICAPCD activity that addresses air quality and potential health impacts associated with the water transfers contemplated by the proposed order. The ICAPCD recognizes that there are issues of regulatory tension between water supply and air quality protection. However, in looking at a few of the more important historic scenarios that have required the State to address impacts of water diversions on a saline terminal lake, funding from the water purveyor to the subject air pollution control district has become an established precedent to ensure the meeting of air quality objectives. The money associated with the purchase and sale of large quantities of water dwarfs the resources available to rural local air pollution control districts in California. Because of this, the Legislature has seen fit, in a context very similar to actions contemplated by the proposed order, to guarantee payment of the needed funds to the relevant air pollution control district to address related air quality concerns and protect the residents of the subject jurisdiction. (*See* California Health and Safety Code Section 42316.) Therefore, ICAPCD respectfully requests that the Board's order be modified to provide for payment by IID to ICAPCD of all necessary and appropriate funds. Of course, this funding should not be provided without controls. ICAPCD would not oppose any reasonable procedure to provide for review of any funds required by the ICAPCD (*e.g.*, the appeal procedure contained in California Health and Safety Code Section 42316). To ensure the permanence of such a program and insulate it from administrative repeal, ICAPCD asks that an additional mitigation measure include support from the petitioners and the Board that they will support the adoption of specific legislation analogous to Health and Safety Code Section 42316, to assure adequate protection for the health and welfare of the residents of Imperial County. Without such a commitment to economic protection for ICAPCD, there can be no assurance that the air quality in Imperial County can be adequately protected from the likely adverse impacts of the proposed project.

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Third, and finally, the proposed order does not fully describe or reflect the air quality concerns in Imperial County and the potential adverse impacts associated with the activity under the proposed order. In fact, the proposed order refers to testimony by other participants in this process that suggests that the fallowing of fields in Imperial County, without the implementation of control measures to limit air emissions, might not lead to increased air pollution or, in the more unusual of the prior testimony, could result in a reduction of air pollution. As presented by the air quality expert for Imperial County, who has been providing and continues to provide expert assistance to ICAPCD, such positions cannot be reasonably relied upon by the SWRCB. Given the status of the ICAPCD and the logical deference that the SWRCB should give to the opinions of the ICAPCD, the relevant sections of the proposed order should be re-written to reflect the likely negative impact on air quality of any fallowing of fields and should better reflect the potential air impacts of a reduction in the acreage of the Salton Sea. In this context, the proposed order should not only reflect the need to respect the determination of control measures implemented by the ICAPCD, but as mentioned above must provide for the provision of funding to support the appropriate review, planning, adoption, implementation and enforcement of those measures – should ICAPCD determine that such measures are required.

The importance of the foregoing requests cannot and should not be underestimated. As a result of the geology and nature of Imperial County, in combination with the emissions that result from industrial and agricultural operations in the area, and exacerbated by the transborder emissions from Mexico, reasonable concerns about the risks presented from the air quality in Imperial County cannot and should not be ignored. Unless the resources requested are provided to ICAPCD, the only logical conclusion is that the amount of pollution in Imperial County will increase as a result of the activities contemplated in the proposed order. Although these actions may be justified, the authority of the ICAPCD must not be undermined and the ability of the ICAPCD to assure the appropriate protection from adverse health impacts for the residents of Imperial County must be maintained. On behalf of the ICAPCD, we believe that the requests made in this letter will assure that protection.

Thank you for the ability to submit these comments and for the attention that you and your staff will pay to them. We look forward to being present at the upcoming hearing and will be pleased to address any questions that you may have at that time.

Respectfully,



Stephen L. Birdsall  
Air Pollution Control Officer