

PROTESTANTS' OPENING STATEMENT  
AT THE STATE WATER RESOURCES CONTROL BOARD HEARING  
APRIL 23, 2002 AT SACRAMENTO  
RE: IMPERIAL IRRIGATION DISTRICT-SAN DIEGO WATER AUTHORITY  
WATER TRANSFER PROPOSAL AGREEMENT

by WILLIAM I. DuBOIS

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I am William I. DuBois. I am a "protestant" in these hearings to the application, not in the sense that I want the approval denied, but that I want the approval only when conditions are placed upon several factors that are now unfair to some landowners or that are unknown or unknowable by landowners. I believe the State Water Resources Control Board (SWRCB) should recess the hearings until these issues have been given more attention by the Imperial Irrigation District (IID).

UNCERTAINTY

The landowners at that time will be more able to appraise what is being imposed upon them. The IID either now has no policy or has not advised their constituents as to the basic conditions under which participation, or non-participation, in on-farm water transfer contracts will be available. At this time, we can only base our assumptions on a draft EIR/S, which in itself is not all that specific as to what we can expect.

## FAMILY FARM BACKGROUND

I have been a legal resident of El Centro since 1917. I began farming in 1940. My property is mostly in Section 10, Township 16 south, Range 13 east, San Bernardino Base and Meridian. I am also representing several other members of my family who are property owners in the same location, which is a little over a mile west of the city limits of El Centro, California. Our farmland receives irrigation water from the Eucalyptus Canal. My grandfather and my parents bought 240 acres of the property in 1917, buying shares in Water Company #2, which were included in the sale, in case the successor, Imperial Irrigation District, did not work out. The land has been farmed continuously since that time. Seven additional parcels, which my wife and I later acquired, adjoin the original homestead. All water companies were taken over by Imperial Irrigation District, successors in interest.

All these parcels have been extensively leveled (graded) since that time. The farm has raised many different crops: cattle, dairy, citrus, dates, swine, fiber crops, sheep, alfalfa, sudan grass, Bermuda grass, wheat, barley, oats, onions, carrots, lettuce, cantaloupes, watermelons, flax, safflower, soybeans, castor beans, sugar beets, grains, guar and sugar, and some others I may not remember. Since the early 1970s, it has been operated by lessees who are presently growing sugar beets, grain and forage crops. There are a dozen date trees, also a few fan palms on the property. Since shortly after Interstate 8 split the farm into two parts, tenants have operated it. The farm now consists of 400 acres. It is all tiled. Cement ditches are on all but two smaller parcels.

## UNANSWERED QUESTIONS

Owners of farmland in the IID are in a quandary. Our financial stability is dependent upon, among other factors, the availability of Colorado River water for crops, livestock and domestic

purposes. If we do not have an adequate and reliable supply of usable, affordable water and a good drainage system, the value of our land depreciates markedly. We believe the value of our property is jeopardized by the terms of this transfer agreement. There are too many unanswered questions for us to support this agreement at this time.

These unanswered questions are:

1. Liability exposure of IID or landowners to Salton Sea related effects
2. How to finance infrastructure, both system and farm improvements
3. Use of history as basis of quantity from which conserved water will be credited
4. Extent and conditions which will determine fallowing
5. Sequence of conservation actions – system first, on-farm second
6. Flexibility in crop choices

#### POLITICAL STRUCTURE OF IID UNFAIR TO FARMERS

We are dependent on the services from the IID, which is run in accordance with policies set by a board of directors elected by all persons living within the irrigation area who are registered to vote. In California, most irrigation district directors, other than Imperial's, are elected solely by the landowners. Here, the directors are elected by all electors whose legal residence is within the IID water service area. Farmland owners who are registered to vote in IID are an extremely small percentage of the total registered voters in the IID.

#### MAIN PRODUCT OF IID IS ELECTRICITY

The IID produces, purchases, distributes and retails electricity in an area much larger and more populous than its water service area. Most customers within IID water service area are subject

to monthly electricity service charges much higher than their annual cost of water service. They also consume much more electricity than do voters in more temperate climates, because of the high demand for air conditioning refrigeration in the long, hot summer period, for which Imperial is infamous. As a consequence, these voters are much more concerned with keeping their electric bills as low as possible, and are not as affected by the price of water.

The logical result of these conditions is that the IID elected directors are necessarily very sensitive to the reliability and cost of electric service to a multitude of customers, and not so sensitive to the satisfactory service of irrigation water to the relatively small number of farmers, many of whom pay water bills much higher each month than their yearly total bills for electricity. IID directors are not necessarily sensitive to farmland owners, many of whom live out of the water service area and therefore do not vote within the district. This situation is not conducive to impressing IID directors with the importance of water transfer details.

#### IRRIGATION MATTERS ARE NOT PREDOMINANT IN IID

Because IID's water is a gravity delivery system, hydro generation of electricity is feasible. Much of the electricity is generated by the falling water used by farmers, crops, livestock and residents. Most electricity customers of IID want the electrical division of IID to pay less money to the water division for the falling of the water that creates the energy. Farmers are in a very poor political position to bargain for equity in this matter, yet any hydro energy costs not credited to the water division must be reflected in higher charges for water. It is not that the majority of electors or the IID Board of Directors want to do harm to the farmers, it is that most of the electors, and consequently the IID board, have as their foremost consideration the welfare of electricity consumers, rather than farmers. This is certainly a side issue to the problem before the State Water

Resources Control Board (SWRCB) in this hearing, but it is important for the SWRCB to know the background of why farmers, whose water rights are held in trust by the IID, do not think this transfer deal is well founded. It should also establish why we should be entitled to some changes in the agreement before it is approved by the SWRCB. It is also important for the SWRCB to recognize why the farmers have not been able to obtain satisfactory policy decisions by the IID prior to these hearings.

#### DRAINAGE WATER GOING INTO SALTON SEA IS BENEFICIALLY USED

During the SWRCB hearings that resulted in Decision 1600, California Department of Fish and Game testified that they considered the surface water drained from farms into Salton Sea was a beneficial use of water because it maintained fish and wildlife. The SWRCB, however, determined that they should require the IID to conserve much of that water (See IID, Exhibit D-1600, # \_\_\_\_\_). So here we are, with the IID's request for approval by the SWRCB of a plan of conservation of water and a transfer of that conserved water to other, primarily urban, water users.

The SWRCB is, in essence, telling us that even though it could be a beneficial use for drain water to go to fish and birds, there are overriding concerns that municipal uses are a more reasonable use for the water. Although we have seen some indications that we may not be held liable for decline of wildlife as a result of diminished flows of drain water to Salton Sea (see Exhibits # 1, 2, and 3), we have no assurance. Without assurance, it seems to us to be very foolish to volunteer to significantly reduce flows to the Sea. In addition to wildlife concerns, we are aware of the value that owners of property near Salton Sea place on other aspects of the Sea. What protection do we have there? We know we can furnish San Diego some

water without damaging our agriculture, if they compensate us adequately, but only if we do not run the risk of being held liable for Salton Sea related damages.

What we are afraid of happening to us is what happened to the water right of the City of Los Angeles when the Audubon Society objected to the decrease in size and quality of Mono Lake. IID has only a permit, whereas the City of L.A. had a license to divert water. We know the differences, but we know the similarities, too, to IID and Salton Sea. It is the similarities that make us apprehensive of the extent to which we might be held responsible.

#### SALTON SEA LIABILITY

In this case, San Diego proposes to buy water from IID in a manner that will require farmers or landowners to first invest a lot of their own money or credit for the first 130,000 acre-feet, to enable the transfer. If they are able, and choose to do so, one of the most remarkable visible events, however, will be the decline in the productivity of Salton Sea. Farmers in Imperial cannot afford to risk the liability of being held responsible for violating the Endangered Species Act or the International Bird Treaty, or as was the city of Los Angeles, being on the losing end of a very catastrophic lawsuit. Without the transfer, nature will take its course, but the farmers are much less likely to be found responsible. Therefore, we would anticipate many landowners will be hesitant, or refuse, to put themselves in a position of increased financial risk.

It appears that when and if a substantial amount of transferable water is made available to the buyers, the surface runoff to Salton Sea will, in a near like amount, be reduced. Very soon the people who are most directly affected by the products, presence and quality of the Sea will notice the effects of diminished inflow. In the past, the IID has been found guilty of, and the farmers paid dearly for, increased inflow to the Sea. As a result, the cost of water service to the farmers was

increased. When the Sea level decreases, we have no assurance the courts will not find the IID at fault for not maintaining Salton Sea's former surface elevation. This is a very important factor because it affects so many fish and birds, and other issues, such as landscapes or horizon effects, boating, fishing and swimming, isolation of marina facilities, etc. The importance of these factors is attested to by the noticed intentions of environmentalist organizations to participate in these hearings. We are as anxious as they to see the results of the SWRCB's decision, but even if it is favorable to farmers and landowners in IID, we probably will still have to deal with the courts for a final resolution.

#### HAZARDS OF PRICING FORMULA

As compensation for the use of IID's water, San Diego is to pay IID an amount that depends on a very complicated formula. (See Exhibit E of Agreement and IID exhibit # \_\_\_\_\_). Some components of the formula, the market-based aspects, are not certainly predictable. In fact, they are highly speculative, and, as are the water quality aspects, dependent on circumstances entirely beyond our control. The IID had to employ a university professor from out of Imperial County to explain the pricing formula to people who asked for an explanation of how it works.

On the other hand, most of the costs of infrastructure changes to land, irrigation and drainage facilities, are reasonably predictable. IID's costs, and the landowners' costs, must be incurred up-front. All IID and landowners' income from the transferred, salvaged water is to be paid monthly in arrears, to the IID. Landowners have not even been advised as to how much per acre-foot will be paid to them, or what other conditions will be required of them by the IID.

## NON-FARMING COMMUNITY WANTS SHARE OF INCOME

We are aware of many concerns voiced by non-farmers (who do not own farmland but reside in the area) that they should share in the proceeds that accrue to IID. However, we do not hear any offers by them to share the costs or the liabilities of farm water conservation.

We are not aware of the IID's having adopted a policy on these issues. This adds to our uncertainty. The SWRCB should not find it curious why farmers think this issue is not ripe yet for SWRCB approval, in spite of the urgency created by the Quantification Settlement Agreement.

## WATER ALLOCATION TO LAND PARCELS

One of the issues most troubling to landowners is the announced plans of IID to allocate the right to water use on the basis of history of past use during a specific period of years. The draft EIR says this period is a 12-year calibration period from 1987 to 1998 (EIR/S Volume 2, Appendix E, Page 1-5, Line 8 and Page 2-10). This was a period following a rise in the level of Salton Sea. The IID was sued by owners of inundated property, and the IID water rate payers have suffered considerably as a result of the judgment. Many farmers then decided to husband their water more conscientiously and made concerted efforts to minimize their surface runoff water. Others did not pay any, or as much, attention to their irrigating practices. It just costs too much.

The rumor was around at the latter part of this period, that history of water use was to be an important factor. This was so important that the IID later, in 1996, adopted a policy that water use after 1995 would not be a factor in establishing a basis. We need to know why the EIR/S says history of water use will be a factor up until and including 1998 (See EIR/S Volume 2, Appendix E, Chapter 1, page 5). We also need to know if the EIR/S is factual or whether the IID resolution of 28 May 1996, is the governing factor (Exhibit # 4, Resolution 12-96).



The result of this is that the careful, conscientious farmer has a lower water use history than does an expedient farmer who didn't spend extra effort and expense to keep surface runoff to a minimum. In other words, this policy of IID's has rewarded, or will reward, the expedient and penalize the conservation minded farmer. Now, the farmers who have spent their own capital to conserve water have a lower history of water use. As a result, they are in a much inferior position to be rewarded by any possible net proceeds of a transfer than their less conscientious neighbors. This seems to violate the principle of environmental justice. It is certainly most unfair!

There are other problems, too, resulting from this system. We have one headgate that irrigates four individual parcels of land owned by four people. Another headgate irrigates five individual parcels, all owned by the same two people. Another irrigates eight parcels owned by four people. One of these headgates, according to IID, has a "history" of about 4 acre-feet; another headgate has a history of about 6 acre-feet per acre. The land on all these gates is fairly uniform as to actual water use. It is uniform as to soil type and grade and length of run. We think it unjust to distribute water allocation in the manner the IID has announced as its intention. As a practical matter, the zanjero (ditch rider) would usually allow irrigators to change heads of water on the same canal system from one gate to another at water-efficient times, rather than only at the end of 24-hour run periods. The zanjero, who is the initial record keeper of water use, does not necessarily know what part of the day a particular gate should be charged for the water use.

This IID policy of allocation of use by history makes the parcels on one of our headgates worth much less per acre than a parcel on another headgate, and we believe this violates economic reason as well as environmental justice. If the transfer is approved under the present circumstances, if one owner wants to sell one parcel or more during the next 75 years, its value will be greatly

affected by its water allocation. I may not be concerned in 30 years, but my successors in interest surely will be.

## COUNTY OF IMPERIAL ASSESSMENT OF TAXES

Next year, will the county assessor be asked to reassess the land on the basis that some parcels do not have as good a water right as other parcels? Will a lessee pay the same rent for land without as much water as for land with more water availability, and thus less opportunity to benefit from a contract to conserve some water for the transfer?

Sandy ground irrigated by flood takes a lot of water, compared to medium textured ground. Some sandy ground has been abandoned because it just costs too much to farm it. However, one farmer told a group that his very sandy ground would be for sale only at a relatively high price, because it has an extremely high history of water use. That may not be the intended effect of this IID program, but it may be the result. Is that going to be allowed? Is that environmental justice? This unfairness may turn out to be the least of IID's problems, as no landowner with a smaller water "history" will find it pays to sign contracts, but will be able as a non-cooperator, to use all the water required for the crop, without any effort to conservation. This could create shortages in IID's supply to serve all eligible land, causing overrun paybacks.

## FLEXIBILITY

After World War II, we pulled citrus trees in order to regain flexibility in choosing what crop to produce each year. Citrus prices had not been very good in the low desert. One of the advantages of being served irrigation water by IID is that there were seldom shortages. If

consummated, this IID-SDCWA transfer may put an end to part of the era of flexibility in water use. If it is not consummated, the QSA promises to put an end to it much sooner. Not because IID's right to water will be damaged, but because MWD's right to water will be damaged. Because their right is almost entirely for domestic use, they have more state priority than do we farming people. They can't rob us of our water, but they can force us to relinquish it in return for compensation. For that reason, we hope the transfer will be conditioned as we ask, and approved by the SWRCB.

In this transfer, IID farmers will be losing a lot of flexibility in crop choices. There is currently a movement to raise sugar cane. It has been found that Imperial can raise much higher yields than other traditional cane growing areas. One of the products of cane is sugar, which is not in short supply. However an alternative product is alcohol. It can be mixed with petroleum fuels to reduce noxious exhaust emissions when MTBE is phased out. Sugar cane uses more irrigation water annually than most crops presently grown in Imperial. Quite a few people are very enthusiastic about the prospects for such an industry there. Under transfer conditions, IID's water for irrigation will be limited, and we will have to reappraise IID's capability in terms of water availability. Limitations on water use have not happened since the mid-1930's, when IID actually nearly ran out of water and had to ration is severely. Part of the price of entering into this transfer should not be the loss of flexibility to the farmer by limiting the crops grown by limiting field waster use or evapotranspiration.

#### URGENCY OF TRANSFER

We understand that it is very important to people in many other parts of California for IID to do its part in the Quantification Settlement Agreement. For understandable reasons, people in the

Sacramento Valley do not want any more of their water to be dedicated to use in the coastal plain of Southern California. Likewise, those people are anxious to acquire a better water supply so they can continue to accommodate more people, and the cheapest additional water supply that can be acquired is that which was already developed long ago and which farmers are using for food and fiber production.

#### FINANCING DIFFICULTY

The IID-SDCWA agreement prohibits following as a means of generating transferable water. All the present directors of IID and the county Board of Supervisors seem to support that popular prohibition. However, the logical sequence of generating transferable water requires lots of monetary capital. IID's working capital is all borrowed money. IID's borrowing was necessary because it cost them so much to pay the cost of preparing for this transfer. IID has maintained this money was spent to protect its water right, not to support the transfer. However, the comment about the borrowing in the IID board material for the Board of Directors meeting of March 12, 2002, says the money is spent on the transfer (see Exhibit # 5).

Even if IID or farmers had adequate capital, it would be hazardous to unilaterally invest in the transfer, because San Diego can terminate the transfer if wheeling costs to San Diego are excessive or for environmental cost reasons. We have grave fears that this transfer, which IID claims is voluntary, will cost all of us farmers dearly. Thus, our water rights are in serious jeopardy.

#### SEQUENCE OF CONSERVATION ACTIVITIES IS ILLOGICAL

The efficiency of improvements to IID's distribution and delivery system is not as dependent on the efficiency of improvements on-farm as are the on-farm improvements dependent on the efficiency of IID's system.

The IID must improve its distribution and delivery systems before many farmers can operate at optimum water efficiency. The EIR/S (Volume II, Ch.4, Page 3) attests that system improvements will enable IID to conserve 100,000 acre-feet annually. Those improvements will also increase flexibility and reliability in water delivery to the farms, enabling on-farm improvements to be much more economically justifiable than they would be without the system improvements.

#### TEMPORARY FALLOWING FOR FINANCING

Boeing does not make an airplane without a healthy deposit from the buyer. Somehow IID ignored that essential business principle when offering to sell water. It may be IID was acting under duress as a result of D-1600.

In order to obtain capital for funding system improvements without San Diego funding, IID should revise its agreement with SDCWA so that it allows temporarily fallowing enough ground to produce enough transferable water that transfer proceeds will fund IID's system improvements. As that is accomplished, farmers and landowners can more easily justify on-farm investments as needed to replace the water from the temporarily fallowed land. IID should rent land (by auction) in order to fallow temporarily. This will fund the system improvements. When system improvements are completed IID should then sign contracts with landowners and tenants to produce, by on-farm conservation, the balance of the water necessary to return to production the temporarily fallowed ground and satisfy the balance of the contracted transfer requirements

The agreement injures us because it does not require the buyer to finance the production (salvage or conservation) of water to be transferred. The agreement does not guarantee or bond the buyer to pay for the water produced; consequently the buyer can back out if environmental or wheeling costs are excessive. The agreement does not indemnify the IID irrigation water sellers from damages that may be imposed on IID by unspecified parties due to, or based on, damages to fish and wildlife, or other properties or amenities, which are subject to protection by state or federal law. When IID pays a damage claim for a water related issue, the farmland owners and/or farmers are the ones who must pay the claims. This damages the farmers and the landowners far more than it damages the IID. The IID electric business is not likewise damaged.

#### SUMMARY

The agreement leaves farmers uncertain as to conditions that will be placed on them, or the price they will receive to compensate their investment and effort and risk in changing irrigation practices, or what will happen to the value of their land property and its assessments in the near future.

#### CONCLUSIONS

We believe the IID has a lot more work to do in structuring its relationship with its prospective landowner-tenant contracts and in establishing its water use and conservation for transfer policies and its financing program. For these reasons, we request that the SWRCB recess the hearings for a stipulated period, perhaps 60 days, during which time the landowners, farmers, and the IID board of directors can get most of these important questions worked out. Otherwise, IID may be receiving SWRCB approval for a program that will not be implementable because

landowners could refuse to implement the 130,000 acre-foot on farm initial requirement of the agreement.

As an alternative, we would urge the SWRCB to condition its approval of the IID-SDCWA petition to the issues discussed above.