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8 STATE OF CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD
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11 In the Matter of Imperial Irrigation District's
12 (IID) and San Diego County Water Authority's
(SDCWA) Amended Joint Petition for Approval
13 of a Long-Term Transfer of Conserved Water
from IID to SDCWA and to Change the Point of
14 Diversion, Place of Use, and Purpose of Use
Under Permit 7643 Issued on Application 7482 of
Imperial Irrigation District.
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Order No. WRO 2000-0013

16 **IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT'S PETITION FOR**
17 **RECONSIDERATION OF ORDER WRO 2002-0013 AND**
18 **JOINDER TO SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S**
PETITION FOR RECONSIDERATION

19 Pursuant to Title 23, Sections 768-769 of the California Code of Regulations,
20 Imperial County Air Pollution Control District ("ICAPCD") hereby submits this Petition for
21 Reconsideration of the State Water Resources Control Board's ("Board" or "SWRCB") Order
22 WRO 2002-0013 ("Order"), issued on October 28, 2002.¹ In addition, in the interest of
23 efficiency and administrative economy, ICAPCD seeks to join in the South Coast Air Quality
24 Management District's ("SCAQMD") Petition for Reconsideration that was filed with this Board
25 This Petition and the SCAQMD Petition are cumulative and do not significantly overlap. They
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28 ¹ A copy of the Order is attached hereto as Exhibit 1.

1 address the Order that conditionally approved the joint petition of Imperial Irrigation District
2 (“IID”) and San Diego County Water Authority (“SDCWA”) for approval of a long-term transfer
3 of conserved water from IID to SDCWA pursuant to an agreement, and conditionally approved
4 IID’s petition to change the point of diversion, place of use, and purpose of use under Permit No.
5 7643 (Application No. 7482).

6 **I. NAME AND ADDRESS OF PETITIONER**

7 Petitioner is the ICAPCD, the lead agency under state law with responsibility to
8 regulate air pollution and preserve air quality in Imperial County, California. ICAPCD has been
9 and continues to be an interested person in this proceeding. ICAPCD submitted written
10 comments and presented oral comments at the October 28, 2002 Board hearing. All
11 correspondence and other written communications regarding this matter should be addressed as
12 follows:

13 Mr. Stephen L. Birdsall
14 Air Pollution Control Officer
15 Imperial County Air Pollution Control District
16 150 South Ninth Street
El Centro, CA 92243-2850

17 With a copy to Petitioner’s counsel:

18 William H. Freedman, Esq.
19 Rick R. Rothman, Esq.
20 Bingham McCutchen LLP
355 S. Grand Avenue, Suite 4400
Los Angeles, CA 90071.

21 **II. SPECIFIC ACTION FOR WHICH RECONSIDERATION IS SOUGHT**

22 Petitioner requests that the Board review the Order adopted at the October 28,
23 2002 hearing on this matter, and make the revisions described below. A certified copy of the
24 Reporter Transcript of Proceedings (Tr.”) is attached hereto as Exhibit 2.

25 **III. DATE OF ACTION FOR WHICH REVIEW IS SOUGHT**

26 The Order was issued by the Board on October 28, 2002.
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1 **IV. REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER, AND**
2 **POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES**

3 **A. ICAPCD's Joins in the Reasons Pointed Out in SCAQMD's Petition for**
4 **Reconsideration and the Points and Authorities Provided Therein**

5 ICAPCD has reviewed the Petition for Reconsideration prepared by the
6 SCAQMD, and hereby incorporates each of the arguments, points and authorities therein by
7 reference, as supplemented and modified by the specific arguments, points and authorities
8 presented below.

9 **B. The Order Must Be Revised to Clearly Define ICAPCD's Lead Role in Addressing**
10 **Adverse Air Impacts Resulting from the Transfer**

11 The Order purports to grant the Chief of the Division of Water Rights final
12 "authority to determine, in consultation with the ICAPCD, the South Coast Air Quality
13 Management District and California Air Resources Board, whether any mitigation measure
14 identified as part of the four-step plan [to mitigate potentially significant air quality impacts from
15 Salton Sea shoreline exposure] is feasible." Order at 74. ICAPCD appreciates the Board's
16 acknowledgment that SCAQMD, ICAPCD and the California Air Resources Board should be
17 "consulted" in assessing mitigation measures. ICAPCD also appreciates the Board's
18 recognition, through its staff counsel, that nothing in the Order is intended to, or can, impair the
19 independent authority of the air districts to regulate air pollution. See Tr. at 29

20 However, as the primary agency charged by state law with responsibility for
21 addressing air quality issues in Imperial County (see Cal. Health & Safety Code § 40000), the
22 ICAPCD is not bound by a determination regarding the feasibility of air pollution mitigation
23 measures by the Division Chief. The Order should reflect this reality. As ICAPCD discussed in
24 its oral and written comments to this Board,² the ICAPCD should not be subordinated to the
25 Division Chief or any other Board official in determining the appropriate mitigation of an air
26 quality impact. Accordingly, we renew our request that the Board revise the Order in a way that

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28 ² A copy of ICAPCD's October 24, 2002 written comments on the draft Order is attached hereto
as Exhibit 3

1 expressly recognizes ICAPCD’s primary (rather than consultative) authority to determine the
2 appropriateness and effectiveness of potential mitigation measures to address air pollution
3 resulting from the Order. At a minimum, the Order should recognize the independent authority
4 of the ICAPCD to impose requirements that it deems to be feasible. Thus, we join in
5 SCAQMD’s request to formalize the sentiments of the Board’s counsel by adding to Condition 8
6 the following language: “**Nothing in this order is intended to or can affect the independent
7 authority of the air districts to regulate air pollution.**”

8 **C. Absent a Funding Mechanism to Support Regulatory Activities Addressing Air**
9 **Pollution Impacts of the Water Transfer, the Order is Inadequate**

10 While the Order imposes responsibilities on, and requires certain actions from,
11 ICAPCD and SCAQMD in connection with addressing potential air pollution impacts of the
12 water transfer, it fails to clearly provide for appropriate financing or grants to support those
13 actions.³ ICAPCD is a rural local air pollution control district with very limited financial
14 resources. Without appropriate funding, it would be difficult or impossible for ICAPCD to carry
15 out the various actions that are required to identify, analyze and mitigate potential air quality
16 impacts related to the Order. The Order purports to address all significant air quality impacts
17 from the proposed transfer (see Order at 72-74), but fails to adequately address the impacts
18 associated with ICAPCD’s potential inability to fund activities necessary to mitigate potentially
19 harmful pollution associated with the transfer. Moreover, it is simply inefficient, ineffective and
20 unfair to require ICAPCD to bear the financial burden associated with air pollution impacts
21 resulting from IID’s and SDCWA’s water transfer when the dollars generated from the transfer
22 are so significant. Indeed, as we have indicated in our prior comments, it is established
23 precedent to require water purveyors to fund activities of the relevant air pollution control district

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26 ³ While we appreciate and agree with the Board’s recognition that sources other than IID may be
27 the source of funding for needed mitigation measures (see Order at 26-27, fn.8) , we believe this
28 recognition does not go far enough in expressly ensuring funding for ICAPCD activities
necessary to address potential air quality and health impacts associated with the Order.

1 in addressing air quality impacts related to the purveyor’s water diversions. See Cal. Health &
2 Safety Code § 42316.⁴

3 Accordingly, ICAPCD respectfully renews its request that the Order be revised to
4 impose on IID primary responsibility to fund (or secure others to fund) all ICAPCD activities
5 required to identify and address pollution impacts associated with the Order. In addition, as we
6 explained in our comments, ICAPCD would support the inclusion of an appeal procedure similar
7 to that contained in Section 42316, to provide for reasonable review of ICAPCD funding
8 requests and to ensure such requests are appropriate and necessary.

9 **D. The Order Is Inadequate in Addressing Appropriate Mitigation for Fallowing**

10 The Order acknowledges the potential adverse air quality impacts that could be
11 created by the fallowing of fields in Imperial County, and the need to mitigate those impacts.
12 Nevertheless the Order improperly treats those impacts in a speculative way that may impact the
13 proper ability to require the full range of appropriate mitigation measures to address fallowing.
14 Despite ICAPCD’s comments and the testimony of its expert on the air pollution impacts of
15 fallowing, the Order simply notes that “[t]his issue is quite complicated and the potential impacts
16 cannot be determined with any certainty.” Order at 73. The Order even incorrectly suggests that
17 fallowing might actually reduce air pollution.

18 ICAPCD appreciates that the Order requires IID to comply with the final updated
19 version of the California State Implementation Plan, and to implement mitigation measures and
20 best management practices for fallowing impacts identified in the Final Environmental Impact
21 Report (“FEIR”) prepared for this Order. However, we believe the Order must go further and
22 make clear IID’s obligation to comply with all rules issued by the ICAPCD (not just SIP
23 approved rules) and to implement mitigation for any present or future fallowing impacts
24 identified by the ICAPCD, not just those specifically identified in the FEIR. As we discussed in
25 our prior comments to the Board, ICAPCD has substantial experience in identifying and
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28 ⁴ A copy of this statute is attached hereto as Exhibit 4.

1 assessing air quality impacts related to following, and this expert experience should guide the
2 identification and mitigation of following impacts associated with the Order.

3 **V. SPECIFIC REMEDY PETITIONER REQUESTS**

4 ICAPCD requests that the Board revise its Order consistent with the statement of
5 points and authorities submitted by the SCAQMD, as modified and supplemented by ICAPCD's
6 statement of points and authorities above.

7 **VI. STATEMENT OF SERVICE ON INTERESTED PARTIES**

8 ICAPCD has attached hereto a proof of service reflecting that copies of this
9 Joinder/Petition and all accompanying materials have been sent to each of the interested parties
10 to the Order.

11 **VII. CONCLUSION**

12 For the foregoing reasons, ICAPCD respectfully requests that the Board grant the
13 request to Join in SCAQMD's Petition for Reconsideration and modify Order No. WRO 2000-
14 0013 consistent with the suggestions above and in SCAQMD's Petition for Reconsideration.

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16 Dated: November 27, 2002

17 BINGHAM McOUTCHEN LLP
18 Attorneys for Imperial County
19 Air Pollution Control District

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22 William H. Freedman
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**AMENDED JOINT PETITION OF IMPERIAL IRRIGATION DISTRICT AND SAN
DIEGO COUNTY WATER AUTHORITY FOR APPROVAL OF LONG-TERM
WATER TRANSFER**

I, Patricia Corbilla, hereby declare under penalty of perjury as follows:

I am over the age of 18 years and am not a party to the within action. My business address is 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106.

On November 27, 2002, I served **IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT'S PETITION FOR RECONSIDERATION OF ORDER WRO 2002-0013 AND JOINDER TO SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S PETITION FOR RECONSIDERATION** by mail to the persons on the attached Interested Parties list, and by electronic mailing to those persons whose electronic addresses appear on the attached list.

Executed on November 27, 2002 at Los Angeles, California.



Patricia Corbilla

Interested Parties Service List

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