

21 East Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 963-7000
Fax: (805) 965-4333



Scott S. Slater

Direct Dial: (805) 882-1420
SSlater@HatchParent.com

December 11, 2002

By Facsimile and Electronic Mail

Arthur Baggett Jr., Chairman
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

Re: IID/SDCWA Petition for Approval of Long-Term Transfer

Dear Chairman Baggett:

On behalf of Petitioner, the San Diego County Water Authority (SDCWA), in the above-referenced matter, we are writing to confirm our continuing support of Water Rights Order 2002-13. We do so with the full knowledge of the arguments raised in the various petitions for reconsideration and the recent actions of various participants to the proceeding.

SDCWA asks that you deny the recent request made by National Audubon Society and others who are parties to this matter (collectively, Audubon) to rescind the Order. Audubon argues that no petition for change is before you and therefore your approval would be illogical at this time. Audubon is flat wrong. Neither SDCWA nor its co-petitioner, the Imperial Irrigation District, has withdrawn the amended petition for approval of a long-term transfer. As noted above, SDCWA supports the Order and urges you to issue an order taking final action on all pending petitions for reconsideration. (*See also* IID Comments/Opposition re All Petitions for Reconsideration of SWRCB Order 2002-13, at p. 3, n.1.)

Moreover, the Order already provides sufficient assurance to the SWRCB that it will not approve a project (the amended petition) which is ultimately disapproved by the IID. (*See* Order, p. 63, 87 ("This approval shall not become effective until the [QSA] has been executed, and permittee has approved the transfer and issued a Notice of Determination under the California Environmental Quality Act.")) The SWRCB should not foreclose the possibility that the IID Board may still approve the project in time to allow California to achieve the Quantification Settlement Agreement and to ensure that California receives the benefit of the Interim Surplus Guidelines.

SDCWA acknowledges that additional environmental work may lead to a petition by IID and SDCWA to the Chief of the Division of Water Rights (Chief) for the modification or

SB 318899 v1: 007710.0011

Arthur J. Baggett Jr., Chairman
December 11, 2002
Page 2

substitution of certain mitigation measures as permitted by paragraph 11 of the Order. It is further SDCWA's understanding that the Chief may modify such alternate mitigation measures if they are found to be equally protective, or more protective, of species already addressed by the Habitat Conservation Plan. Based on this understanding, we believe that the Order provides a workable basis for the parties to proceed.

Specifically, based on the California Department of Fish and Game's December 2, 2002 *Finding with Respect to Implementation of the Quantification Settlement Agreement and the Salton Sea Made Pursuant to Section 2081.7(c) of the Fish and Game Code (S.B. 482)* (DFG Finding) that "the impact of the first 15 years of the QSA [as described in the October 15, 2002 *Summary Term Sheet -- Principal QSA Revisions (QSA Revision Term Sheet)*] to fish and wildlife resources and habitats that are sensitive to increases in salinity would be materially identical to that of the Baseline condition," should that finding be made final, the parties *may* petition for modification of paragraphs 5 and 6 of the Order to reflect the method of conservation set forth in the QSA Revision Term Sheet.

In closing, SDCWA respectfully urges the SWRCB to issue an order taking final action on all petitions for reconsideration.

Respectfully yours,

Scott S. Slater
Stephanie Osler Hastings
For HATCH & PARENT
A Law Corporation

SSS:scoh

cc: Service List (by facsimile or electronic mail)