

**State Water Resources Control Board Public Hearing  
on Petition of the Imperial Irrigation District  
and the San Diego County Water Authority  
for Approval of a Long-Term Transfer of Conserved Water  
Commencing April 23, 2002  
Sacramento, California**

**Proposed Testimony of  
Larry A. Gilbert**

## **Indemnification**

In the Agreement for Transfer of Conserved Water by and between IID and SDCWA, in Article 8.1(d) IID is given permission to terminate the transfer agreement "If, after the Effective Date, unexpected environmental consequences result in additional mitigation costs, and those costs exceed, as of the Subsequent Environmental Decision Date, the difference between \$30 million (in Effective Date Dollars) and the IID's mitigation costs before the Effective Date, as identified in Article 8.1(d)(i) above, then the IID may at that time terminate this Agreement."

While this provision gives IID authority to **terminate** the agreement and cease to conserve and transfer water pursuant to it, there is no provision to protect IID & its landowners from an order or judgment requiring it to mitigate for impacts after they occur. We have been told repeatedly since early in the transfer negotiation process that we would have a "no surprises" deal, that all claims and mitigation costs would be discovered before the final approval of the contract. Now it appears that some situations are not covered under the legal assurances we are obtaining.

It is imperative that IID and its landowners actually be indemnified against any order or judgment to mitigate or pay damages that exceed the amounts specified in the contract for impacts to persons, property or the environment that result from IID's good-faith fulfillment of its contractual obligations. It is essential that we be protected from surprises that could materially change the deal after it has been approved. Without such indemnification and protection I, as a farmer and landowner, would be completely opposed to IID's participation in this transfer.

The Imperial County Farm Bureau, whose membership includes more than 500 farm families, has taken a similar position. Their statement to that effect is included in a letter to this Board dated March 11, 2002. This letter is **Evidence Item # (Mar. 11? ICFB letter)7.**

### **Conservation Plan**

How the water will be conserved is a very important consideration in determining whether the transfer will be beneficial to IID, its landowners and farmers, and the community. I, as a landowner and farmer, need to know what the conservation plan will be, and how and by whom it will be administered, before I am able to determine if the transfer is acceptable or not.

### **On-Farm Conservation**

If IID adopts a conservation plan like the one it proposed in November and December 2001, see Evidence Items # (Nov. 19 "slides")<sup>5</sup>, # (Dec. 6 IID letter)<sup>6</sup>, & # (Dec. 17 "slides")<sup>4</sup>, where landowners are paid to reduce their diversions without any conditions being placed on their water use efficiency, farmers will conserve very little water by efficiency improvement.

Let me illustrate that with some actual numbers. I farm 700 acres, part of which I own, near the city of Imperial. For the years 2000 & 2001 my average water use was 5.7 acre feet per acre and 4.7 acre feet per acre respectively. Rent paid averaged \$131 & \$135 per acre for the same two years. That made the annual value of an acre foot of water \$23.08 and \$28.52 to the landowner, when measured by its income producing ability.

My profits per acre from farming, for those two years was somewhat less than the rent. I could state the profits on a cash basis, but that would

not be meaningful. I did not precisely calculate the profit on an accrual basis, but I can confidently state that the accrual basis profit was closer to  $\frac{1}{2}$  the amount of rent I paid.

These amounts demonstrate that a landowner in this situation could not afford to spend much more than about \$20 per acre foot to conserve water, unless he had some incentive other than enhancing his lands' agricultural rental value.

Since the farmer's profit was much less than the landowner's rent, he could not afford to spend nearly as much to conserve water as the landowner could.

Now let me put these amounts into perspective. If I increase my efficiency on a field by 1 percentage point (for example to 86% from 85%) where the average water use is 5.00 acre feet per acre, I would conserve .05 acre foot per acre. At \$20 per acre foot, that amounts to \$1 per acre for the entire year. For a 70 acre field that would be \$70 for the field for the year. That would pay for about  $\frac{1}{2}$  hour of extra irrigator labor per irrigation, or less than 8 hours for the entire year. It is simply not enough to pay the costs associated with any efficiency improvement.

If, in the above example, the efficiency were improved by 10 percentage points (for example to 95% from 85%) the gain would only amount to \$10 per acre per year, or \$700 for the entire field. The law of diminishing returns causes additional increments of efficiency improvement to cost more, not less, and this meager amount of money would not even pay the overhead on a project capable of conserving that water.

With such a small incentive to conserve water, it is unlikely that farmers or landowners would conserve any measurable amount of water by

efficiency improvement under the plan which IID has proposed. They would conserve the required amount of water by simply farming less, or fallowing. This would not maintain the agricultural output of the farms within the IID.

Maintaining agricultural output is one of the objectives for the transfer; "To provide an economic stimulus to Imperial Valley's agricultural economy and the surrounding community.", see IID Water Conservation and Transfer Project Draft EIR/EIS, section 1.2.1 *Water Conservation and Transfer Objectives*, page 1-3.

If agricultural production is to be maintained and water use efficiency improved, farm conservation incentives must be related to water use efficiency. The conservation plan proposed by IID will not accomplish IID's stated goal of maintaining the agricultural economy of the Imperial Valley and the surrounding community, since the proposed conservation incentive payments are not related to meeting any water use efficiency targets.

#### **Land Rehabilitation Not Recognized by IID Cons Plan**

If the plan proposed by IID is ultimately adopted, It would also cause farms such as mine to make reductions in their use, for which they would not be compensated. Some of the land my family and I own was obtained during the 1940's and 1950's. Areas of it had accumulated high concentrations of salts prior to that time. This was in part due to the fact that the water delivered to it was a mixture of Colorado River water and high-salinity drainage water from the Alamo River. Other contributing factors included that it had very little natural drainage and the technology

for installing subsurface drainage tile to remove the salts was not yet generally available.

As the technology improved and funds became available, subsurface drainage tile was installed on the land. As time passed, and we learned that additional tile was needed. We installed more tile, reducing the spacing between the lines of tile. We also employed deep tillage to help the water to reach the tile lines so it could carry away the accumulated salts. Sometimes sprinklers were employed at considerable added cost to improve the leaching. This combination of activities increased leaching a great deal and helped remove many tons of accumulated salts per acre on many portions of the land. We have continued to add subsurface drainage tile, the most recent being installed in March of this year. **Evidence Items # 9, thru #** (tile maps for Rubber 8 east, Rubber 8 west, Rubber 11a, Rose 25, & Rose 32) show some of the drainage tile that has been installed since 1987. The total amount exceeds 100,000 feet.

As accumulated salts are removed from the soil, the land experiences more leaching, becomes more productive and is farmed more intensively. It therefore uses more irrigation water.

IID's conservation plan proposes to limit the water available to my family's farmland to the amount it used during the 1987-1995 period, a period during which it was still being reclaimed and was less productive than it presently is. We would receive no compensation for this reduction in the amount of water available to our farm even though our ability to profitably farm the land would be impaired.

My family would no longer be able to fully realize our fields' enhanced and improving productivity, which we have been obtaining at considerable

expense. We would be injured by having our water right reduced and the productivity of our lands limited—without compensation.

### **IID Conservation Policies and Regulations Reversed**

In the late 1970's, IID was being plagued by liability judgments resulting <sup>FROM</sup> ~~from~~ the rising level of the Salton Sea. In 1979, the IID Board of Directors established a Water Conservation Advisory Board (WCAB) to advise it on conservation measures that would make farm water use more efficient and thereby reduce return flows to the Salton Sea. **Evidence Item #3** (IID 1979 resolution establishing WCAB). I was one of the original 10 members of the WCAB and served as its 2<sup>nd</sup> chairman.

To accomplish the above-stated goals, the WCAB established a subcommittee to consider the subjects of "Tail water; revision of assessment procedure and one-day orders - check for wasting", Evidence Item # (Dec. 20, 1979 WCAB resolution). I was an active member of that WCAB subcommittee of 3 which developed and recommended a program which urged farmers to keep their tailwater below an arbitrary target. That program was subsequently approved and implemented by the IID Board. (The SWRCB heard testimony regarding that program in the hearing that preceded the issuance of Decision 1600.)

As is the case with all regulations, some expended considerable resources to comply with that program while others largely, if not completely, disregarded it.

Little did we know that the IID Board which implemented that program would later propose to penalize those of us who worked hard and

most successfully complied with it, by reducing the amount of water we could receive and use on our lands.

I refer to the IID Water Conservation and Transfer Program Draft EIR/EIS; 3.1.4.1 (page 3.1-91) under the heading "*Key terms and strategies for achieving conservation*" where it states: "On-farm conservation would be measured by the reduction in a quantified amount at each farm turnout **based on historical water deliveries from 1987 to 1995.**" (Emphasis added.) This method of measuring on-farm conservation is also described in **Evidence Item #5**, titled *IID On-Farm Workshop, November 19, 2001*, on page 4, bottom 2 boxes.

If IID adopts this method of allocating water and measuring conservation, those of us who expended the greatest amount of resources and were the most successful in complying with IID's own policies and regulations to use water efficiently, would be penalized. The amount of water available to us for farming purposes would be reduced when compared with what we would have received if we had totally disregarded IID's policies and regulations and been less efficient in our water use. Implementation of this method of distributing water would place my water rights in jeopardy and unfairly limit my ability to effectively farm my land. On the other hand, those who disregarded IID's policies & regulations and were less efficient, would be rewarded by being given a larger water allocation for their fields.

#### **Opportunity to Conserve Would be Distributed Unfairly**

I now refer to **Evidence Item #4**, titled *IID On-Farm Workshop, December 17, 2001*. Under the issue of "Maximum Practical Conservation Obligation", a method of apportioning the opportunity to conserve

("conservation obligations") was presented. The described method would allow each field to conserve an amount equal to a percentage of the water the field used during the aforementioned 1987-1995 period. This would have the effect of further penalizing the landowners who were most efficient with their water use, by reducing the amount they could conserve for transfer. This would be an unfair method of distributing the opportunity to conserve.

If IID is allowed to implement their conservation plan as proposed, it would harm those water users which were most efficient in their water use practices and reward others for their inefficient use.

### **FB Conservation Plan**

I now refer to **Evidence Item # 3**, titled Farm Bureau Water Conservation Plan which was adopted by the Imperial County Farm Bureau Board of Directors at its regular monthly meeting January 14, 2002. This plan was presented and explained at the third IID Water Conservation Public Workshop, which was held on March 18, 2002. The IID has not yet indicated when it will adopt an on-farm conservation plan, so I am presenting the Farm Bureau plan at this time. Some of the details of the plan still need to be worked out, but the principles and key points are pretty well defined.

The plan calls for improvements to the IID delivery system to be the cornerstone of the program. These improvements include some seepage recovery facilities and the installation of multi-purpose canal/lateral interceptor systems with reservoirs where needed. The improvements not only make it possible to conserve water by reducing canal spills and seepage losses, but facilitate additional on-farm conservation by allowing

farm deliveries to be terminated when sufficient water has been received. This element of the plan is comparable to one part of IID's proposed conservation plan. It also proposes to conserve the same amount of water from the IID delivery system as does IID's plan.

The second element of the Farm Bureau plan is a positive, voluntary incentive program to increase farms' water use efficiency, primarily by reducing tailwater return flows. Efficiency targets would be set, and farms would be rewarded for attaining those targets. The targets would be set at appropriate levels so as to be attainable and to obtain the conservation needed to meet transfer obligations.

The third element of the plan would be the selection and funding of individual conservation projects. Most of these on-farm projects would likely be selected from offers submitted by landowners &/or farmers. They would be approved for implementation & funding on the basis of their cost per acre foot of predictable conservation.

Both of the second and third on-farm elements would be completely voluntary and equally available to all farms. This voluntary aspect fulfills one of the transfer objectives for IID, namely "To develop a water conservation program that includes the voluntary participation of Imperial Valley landowners and tenants so that on-farm conservation measures ... can be implemented." See IID Water Conservation and Transfer Project Draft EIR/EIS, section 1.2.1 *Water Conservation and Transfer Objectives*, page 1-3.

These two elements of the plan would be administered so as to use the funds available to obtain the maximum amount of conservation. They would be administered by a qualified technical group in a fashion similar to

how the current IID/MWD transfer is administered by the Project Coordinating Committee.

Using transfer revenues to directly fund conservation projects, incentives based on conservation performance, and other conservation related activities would insure that, to the greatest extent practical, another transfer objective is met; "To provide an economic stimulus to Imperial Valley's agricultural economy and the surrounding community." See IID Water Conservation and Transfer Project Draft EIR/EIS, section 1.2.1 *Water Conservation and Transfer Objectives*, page 1-3.

No water rights would be impaired; no farm would be required to reduce its water use without compensation, nor would any field be penalized for past efficient use of water if the Farm Bureau Conservation Plan is implemented.

#### **Need to pay-as-you-go**

As was discussed earlier, this agreement to conserve and transfer water is subject to termination under certain circumstances. If the agreement is terminated, payments to IID for conserved water would cease.

If IID and its landowners incur debt to finance conservation projects and activities, and the agreement is terminated before that debt is retired, they would be left with no source of revenues to pay off the debt. This would cause great harm to IID's landowners and farmers by placing an unreasonable financial burden on them.

The Farm Bureau Conservation Plan includes a program to avoid going into debt, and at the same time insure against IID overrunning its

entitlement to Colorado River water. That program would empower IID to obtain the right to temporarily withhold water from farmland, fallowing it. This would permit IID to restrict its water use as necessary, to keep it near but below 3.1 MAF in any year. To the extent that each year's transfer revenues exceed the amount needed to keep water use within its entitlement, IID would be able to invest in conservation measures.

As investments in conservation measures increase and produce results, the rate of conservation would exceed the rate of increase in transfer quantities. In time, the amount of water conserved should equal or exceed the quantity to be transferred. This should keep IID's use continually within its Colorado River entitlement, provide needed funds to conserve all the water to be transferred, and possibly permit its farmers to respond to potential demands for increased agricultural production.

This program proposes that the land to be temporarily fallowed would be selected from bids submitted by landowners and farmers. The most favorable bids, based on estimated cost per acre foot of expected conservation, would be accepted. No landowner would be deprived of any water rights without fair compensation. Farmers' ability to effectively utilize their land for agricultural purposes would be preserved and not impaired if the Farm Bureau Conservation Plan is implemented.

### **Efficiency Improvement Expected**

Under the Farm Bureau Conservation Plan, available conservation revenues would be used to improve IID's delivery system efficiency, and the efficiency of farm water use. This should make sure IID's water use is both reasonable and beneficial. It should also provide an economic

stimulus to the Imperial Valley agricultural economy by maintaining agricultural output, and additionally stimulating the economy of the surrounding community by adding a local conservation industry.

In summary, adoption and implementation of the Farm Bureau Conservation Plan would dramatically improve water use efficiency within IID to more than satisfy State and Federal regulations and statutes. It would insure that no water rights are diminished without just and fair compensation. It would provide for voluntary participation by all IID landowners and tenants. It would not penalize landowners for past efficient water use. It would distribute the opportunity to conserve among IID water users fairly. It would protect IID farmers and landowners from unexpected termination of the contract. And it would maintain Imperial Valley agricultural output at the maximum practical level so that both the agricultural economy and the economy of the surrounding community would be stimulated.