

October 10, 2002

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

Re: Petition of Imperial Irrigation District and San Diego County Water
Authority for Approval of a Long-Term Transfer of Conserved Water

Dear Ms. Whitney:

Due to the potential impacts on power generation at Headgate Rock Dam and the riparian environment, the Colorado River Indian Tribes (CRIT) remains opposed to the Amended Joint Petition of Imperial Irrigation District and San Diego County Water Authority. However, CRIT respectfully submits the following comments on the suitability of the draft order on the petition. The following comments are in no way intended to waive or impair CRIT's right to petition for reconsideration, or otherwise appeal or challenge on any grounds whatever, any final order the SWRCB may issue in this matter.

CRIT believes the draft order improperly balances the potential benefits against the environmental impacts of the proposed transfer. California Water Code section 1736 states,

The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Game, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

Section 1736 does not specify what the SWRCB may consider in determining whether the affect of a proposed transfer on fish, wildlife, or other instream beneficial uses is

unreasonable. However, throughout the draft order the SWRCB states that in determining whether the impact of the proposed transfer is unreasonable, “the SWRCB must take into account all relevant factors, including the nature and extent of the impacts, the benefits of the proposed transfer, and the cost of mitigation measures.” (Draft Order pp. 2, 47).

Yet despite this expansive interpretation of section 1736, the SWRCB failed to consider the cultural importance of the impacted fish and wildlife. Through written and oral testimony CRIT discussed the cultural significance of backwater, cottonwood/willow and mesquite habitats to the Mohave people. (CRIT 16 and 17). The draft order states the proposed transfer will have significant impacts on these habitats. (Draft Order 66). Surely the cultural significance of these habitats to the Mohave people is relevant to the determination of the reasonableness of the impact of the proposed transfer on those habitats. Therefore, CRIT believes the SWRCB’s analysis of the reasonableness of the impact of the proposed transfer on fish and wildlife is incomplete. The SWRCB should revise the draft order to include consideration of the cultural significance of impacted backwater, cottonwood/willow and mesquite habitats.

It is unlikely CRIT will be able to attend the SWRCB’s October 16, 2002 workshop. Please consider these written comments in lieu of a live presentation.

Very truly yours,

/Signed/

Eric Shepard
Assistant Tribal Attorney
Colorado River Indian Tribes