

STATEMENT OF SUPERVISOR LARRY GROGAN
COUNTY OF IMPERIAL

before the
State Water Resources Control Board
Workshop on IID-SDCWA Long Term Transfer
August 30, 2005

The County of Imperial appreciates the State Water Board's decision to hold this workshop on the socio-economic impacts associated with the IID-SDCWA long-term water transfer, and on the implementation of desalination in the San Diego water service area. The County presented both of these issues to the State Board during the State Board's 2002 proceedings that led to the adoption of the State Board order conditionally approving the transfer, and the County believes that both issues merit the State Board's continuing attention.

We look forward to hearing San Diego's report on desalination; we have been encouraged by periodic public reports of efforts by San Diego and Metropolitan Water District to achieve greater permanent water self-sufficiency through this technology. The remainder of my statement will address the subject of socio-economic impacts.

To summarize the County's present position, the honest determination and reimbursement of third-party socio-economic impacts remains an unresolved and highly contentious question in the Imperial Valley, and we are concerned that San Diego has been unwilling to acknowledge the actual costs and impacts of the transfer. Prior to and following this Board's order on the transfer, and prior to and following the final approval of the QSA and related agreements in October, 2003, the County attempted to secure

assurances that it and its residents would be protected from the transfer's third-party impacts. We sought this assurance by participation in the final IID-SDCWA transfer order of this Board and the parallel 2002 legislation (SB 482), and less successfully in attempted participation in the formulation and subsequent modification of the final QSA package. That in the end we have not been successful is in our view principally attributable to the stubbornness of all the QSA water districts, who refuse to recognize the County as an equal entity worthy of dealing with them. As a consequence we have been forced to challenge the QSA and transfer in litigation now pending before the Sacramento Court of Appeal and Sacramento Superior Court. Thus, because of the resistance to our participation by the QSA parties themselves, their work is not final and remains subject to judicial correction or disapproval.

I will shortly outline our outstanding concerns, and urge the State Board to inquire further what it can do to help resolve them. Before that, however, let me offer the best statement we can make at this time about actual third-party impacts suffered to date in or by the County. In preparation for this hearing, we asked state and local offices such as the California EDD and County Agricultural Commissioner to provide data from which we could quantify experienced third-party impacts. The answers have suggested but not definitely established economic losses attributable to the following. The best response we can provide to your Board today is that it is too early in the transfer to determine a credible empirical result of the water transfer's impact. We need more data, a better set of criteria by which to judge, and the best and most disinterested professional assistance our State can provide, to credibly assess the QSA's third-party impacts.

The lack of dispositive empirical data suggests that other estimates your Board may hear today should be taken with a grain of salt. All of these estimates are based on very limited information, and rely primarily on predictive models – which all of us know are only as good as the assumptions built into them and the rigor of the calculations. The County believes that the measure of third-party impacts must be based on actual experience and not hypothetical models that are at best opaque and that lack confirmation.

The results to date show the unreality that surrounds assessments – principally asserted by San Diego – that the following project is actually a net benefit to Imperial County and the Imperial Valley. As the County has consistently advocated, third-party impacts must include not just lost income to individuals, but also lost income to all people and businesses that do business in Imperial County. Third-party impacts also must include increased costs imposed on the County and other governments, and not just the decreased taxes we suffer.

It is irrational, for example, to pretend to compensate for third-party impacts while categorically excluding impacts on all who do business in our County. Confining the impacts to what the Fourth Amendment to the transfer agreement labels as “residents” excludes the economic losses to many people who work in our County and whose earnings there contribute to our overall economy. The classic example is workers from Mexico legally employed in Imperial County; the economists point out that seven percent

of our County residents work elsewhere, and that seven percent of Mexicali's residents work in the United States (mainly, of course, in Imperial County). But seven percent of our residents, whose earnings are not affected by fallowing, amounts to 11,000 people. Seven percent of Mexicali residents, whose earnings are affected by fallowing, amounts to 42,000 people working in Imperial – unaccounted for by the decree imposed in the IID-SDCWA Fourth Amendment. (On a smaller but not insignificant scale, let me note that many of our own County employees are not residents of the County, so that losses to their income occasioned by the transfer would similarly escape accounting.)

It is equally irrational to claim that third-party transfer benefits are enhanced by IID's so-called rebate of water rates. Most of that rebate in 2004 went to the same landowners who are not third parties to the transfer; and in any event, IID in 2005 has taken all that back and more with a recently-enacted increase in water rates.

Fairness also requires that adverse impacts to enterprises the agricultural sector not be offset by gains in other sectors. We understand that if an individual laid off because of the transfer is able to gain new employment created by the transfer, such that his or her net income does not decrease, no adverse impact can be charged. But still an adverse impact remains to the employer of that individual if that employer's business enterprise is eliminated or sharply curtailed, and that adversity must be measured and compensated.

The following program cannot be credited with the "building boom" now being experienced in Imperial County. Adverse impacts of following should not be masked by statistics on overall unemployment rates. Without following our unemployment would be significantly lower – not remain essentially constant – because farm and construction jobs would both exist.

Finally, were the impact not of such grave concern to our constituents, it is almost humorous, as San Diego claimed in April, that one positive economic impact on the transfer ledger is the amount of money IID has paid to its attorneys and consultants to defend the QSA. As those who have appeared before this Board in this room remember, IID attorneys' fees, like Imperial Valley water, flow primarily to San Diego.

What has the County done to protect itself, and assist the State of California, in honestly determining and mitigating third-party impacts? First, we participated in this Board's proceedings, which led to the terms of transfer approval that the Board is seeking to enforce today. Second, we participated in the Legislature to secure the protections in 2002 SB 482, which enacted Water Code section 1013(b) to require our Imperial County Board of Supervisors to determine whether the transfer's following program produces unreasonable economic or environmental effects, and which also requires the State of California to assess whether additional resources would be needed to mitigate these impacts. Third, we attempted to participate in (but were excluded from) the 2003 negotiations that produced the final QSA and transfer agreement and that also produced new legislation attempting to ensure mitigation. Specifically, the three 2003 bills that

framed the final QSA and its mitigation were released to the County only hours before the one legislative hearing that took place the day before final enactment in August of that year; unlike our experience with SB 482, we were unable to define or secure amendments expressly stating that within the Imperial Valley the economic costs of both social and environmental mitigation would be provided by the transfer beneficiaries.

Attached to my written statement are the series of Imperial County Board of Supervisors Resolutions that document our substantive positions, and our efforts to secure those positions without litigation. We have asked for binding commitments from the State and the QSA parties that funds made available by SB 654 "for environmental mitigation purposes" includes costs incurred by the County to administer and enforce its regulation of transfer-related air quality impacts and transfer-related groundwater extraction. We have asked that the definition of third-party impacts in the Fourth Amendment be expanded to include changes in income for all businesses or individuals employed or doing business in Imperial County (not just residents), and to include net increases in the costs of public or social services provided by local governments in the County (not just changes in tax receipts).

In the County's transactions with IID, we have made limited progress in securing these protections. Working with IID staff, the contracts between IID and following farmers have been written to require the farmers' compliance with lawful APCD air quality regulation, and to anticipate that IID will claim from the SB 654 JPA the costs of

reactive air quality mitigation measures. IID has also advised us that their reading of the existing Fourth Amendment includes all of the coverage we have asked for.

But IID alone cannot provide the socio-economic relief that the County needs. Not even IID has committed that the County should be compensated for the costs of preparing an effective, proactive transfer-related air quality mitigation plan (which may cost millions of dollars), such as has been required at Owens Dry Lake. None of the QSA parties have been willing to acknowledge that Imperial County's APCD (like the SCAQMD in Riverside County) has lawful jurisdiction over the regulation of these impacts. And with respect to the Fourth Amendment, San Diego has consistently resisted the changes we have sought, making clear that they have no desire to expand the scope of coverage. Significantly, in its November 2004 report, the three-member economist panel confirms that they must exclude impacts to non-residents, even though losses to those non-residents adversely impact the County's economy; moreover, the panel includes no accounting for increased costs of local public services.

Presented with this dilemma, and our duty under Water Code section 1013(b) to assess the following program for the adequacy of its mitigation measures to avoid or mitigate unreasonable impacts in the County, and not wanting to stand in the way of IID's initial efforts to meet its QSA obligations, our Board on March 16, 2004 concluded that with the inclusion of the provisions that still elude us, the IID following plan will be conditionally found to include the necessary mitigation measures. We now ask this Board to help us realize this expectation.

Had Imperial County been able to participate in 2003 as an active drafter of the final QSA arrangements and legislation, as it did in the 2002 legislation and as it did in the proceedings before this Board, we would have argued for the missing provisions, and we believe that logic and fairness, compelled by a desire to produce consensus in the QSA, would have made them part of the QSA. Now that this Board is investigating whether its reserved jurisdiction should be exercised to compensate for the transfer-related shortcomings, and whether it should act for the State in the absence of the legislatively-commanded State assessment of third-party-impact shortcomings, we ask for your help to bring these changes about.

We also note two revisions that we have asked for in this Board's 2002 order conditionally approving the transfer: elimination of the conclusion that the Katz transfer legislation, Water Code section 1810, does not apply; and a commitment that prior to the conclusion of the first 15 years of the transfer, a supplemental environmental report and statement be prepared that would enable the parties before the Board to seek modification of the transfer based on observed impacts at that time. In responding to the notice calling this workshop, the County of Imperial asks the Board to make these revisions. As with the revisions and commitments we have sought from the QSA parties themselves, we ask for these terms to remove some of the underlying disputes in our pending QSA-related litigation.



BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF IMPERIAL
2002-111
RESOLUTION OF THE COUNTY BOARD OF SUPERVISORS
OF THE COUNTY OF IMPERIAL ON THE WATER TRANSFER BETWEEN IID AND SDCWA

WHEREAS, the Imperial County Board of Supervisors, (hereinafter Board), is the one governing board elected by all County voters as the general unit of local government, thereby serving all County residents; and,

WHEREAS, the Board is charged by the California Constitution Article XI Section 7 to protect the health, safety, environment, economic diversity, and the quality of life of its residents; and,

WHEREAS, the Board has actively been involved in the review of the proposed water transfer, including the participation at the hearings before the State Water Resources Control Board; and,

WHEREAS, the Board of has reviewed and commented on the Water Transfer Environmental Impact Report (EIR) / Environmental Impact Statement (EIS) and on the Quantification Settlement Agreement (QSA) EIR; and,

WHEREAS, the Board has and continues to have, grave concerns over the long-term impacts of this proposed transfer, and has expressed its concerns to the IID, SDCWA, USBR, and the State Water Resources Control Board of the State of California; and,

WHEREAS, the Board, originally and steadfastly opposed any fallowing of farm land to offset the water needed to the transfer; and,

WHEREAS, the Board, holds the conviction that the transfer could be and should be accommodated only through system and on-farm conservation; and,

WHEREAS, the Board, recognizes that a "temporary" transfer of water to SDCWA could and should be supported, in order to assist urban California water districts in living within California's Colorado River allocation; provided that any costs, and all negative environmental and socio- economic impacts, are adequately mitigated; and,

WHEREAS, the draft decision dated September 26, 2002 by the State Water Resources Control Board essentially failed to look beyond a 15-year period and fails to allow a termination of the transfer obligations by IID, should whatever transfer that is approved, prove environmentally or economically unsound at the conclusion of the 15-year period; and,

WHEREAS, the IID, SDCWA, and State Water Resources Control Board erroneously assume that the transfer will not induce growth in the San Diego region, and fail to recognize the obligation of San Diego to mitigate growth that relied and continues to rely on surplus Colorado River water no longer available, by developing a permanent alternative sustainable source of water, such as desalination; and,

WHEREAS, the Board has expressed grave concern over the impacts of the transfer on the Salton Sea, and on air quality in particular, including other environmental problems, and all parties must recognize that the transfer cannot add to them; and,

WHEREAS, the Board should have been more directly included and involved in the transfer process; and,

WHEREAS, the Board expresses grave concern over the divisiveness this project has created between groups of people in the Valley, all of which was and is unnecessary if the transferring and QSA parties reach a fair and equitable agreement:

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors that:

- 1) The Board cautiously supports the non-permanent transfer of water between IID, (which holds the water rights in trust), and the SDCWA, provided it does not jeopardize IID's Colorado River allocation as decreed by the Supreme Court, nor alter the IID's secured rights to the Colorado River water;
- 2) The Board supports the transfer subject to SDCWA's development of a capacity to produce at least 50,000 acre feet of desalinated water from its own facilities within the next 15 years;
- 3) The Board must be involved and have a definite role in the development of any "fallowing" plan that will or may need to be designed in order for a "fallowing" program to be implemented; and as mandated by SB 482 as enacted, the Board's approval of the mitigation plan for environmental and economic impacts will be necessary;
- 4) The Board through its groundwater ordinance, shall exercise its authority to regulate extractions of groundwater if any, from any aquifer within Imperial County, including those in the East Mesa.
- 5) The transfer beneficiaries shall fund ICAPCD monitoring and assessment of air quality impacts as the transfer proceeds, fund the development of air quality mitigation specifications, and fund the implementation of those measures adopted by the ICAPCD.

6) The Board, expresses its preference for mitigation measures to be developed and implemented in a manner set forth in IID's proposed amendment to the July 3rd version of SB 482 (see attached);

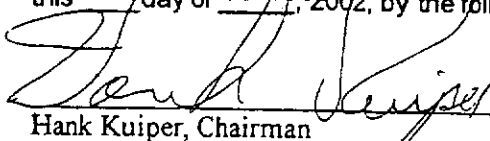
7) The Board by supporting the transfer under the conditions stated supports the IID in reaching a fair and equitable agreement with SDCWA, however, with the understanding that if significant "socio-economic" impacts or environmental impacts occur in the Valley during the next 15 years, the IID have the authority to voluntarily withdraw without penalty from its obligations under the transfer agreement;

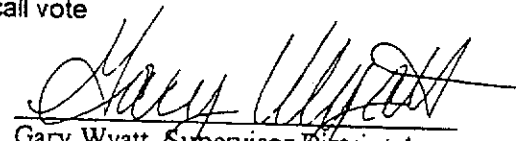
8) The Board by supporting the transfer under the conditions stated in no way abrogates its legal rights to protect the interests of the County of Imperial, should the final agreement not be legally, environmentally, or socio-economically acceptable to the County.

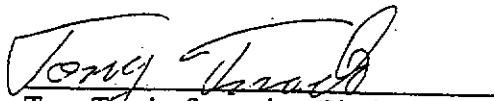
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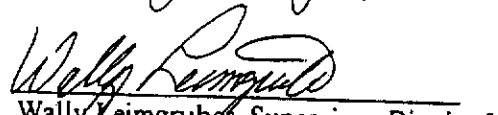
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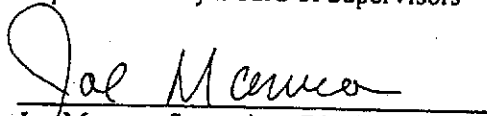
PASSED AND ADOPTED, by the Board of Supervisors, County of Imperial, State of California, this 8th day of October, 2002, by the following roll call vote


Hank Kuiper, Chairman
Imperial County Board of Supervisors

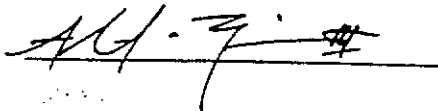

Gary Wyatt, Supervisor District 4
Imperial County Board of Supervisors


Tony Prado, Supervisor District 1
Imperial County Board of Supervisors


Wally Leimgruber, Supervisor District 5
Imperial County Board of Supervisors


Joe Maruca, Supervisor District 3
Imperial County Board of Supervisors

ALBERT ESPINOZA,
Clerk of the Board Of Supervisors,
County of Imperial





BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF IMPERIAL
November 12, 2002

**RESOLUTION OF THE COUNTY BOARD OF SUPERVISORS
OF THE COUNTY OF IMPERIAL ON THE WATER TRANSFER
BETWEEN IID AND SDCWA**

RESOLUTION 2002-119

WHEREAS, the Imperial County Board of Supervisors has since adoption of its resolution dated October 8, 2002, continued to participate in assessment of a proposed water transfer between the Imperial Irrigation District and San Diego County Water Authority, including participation in the proceedings of the State Water Resources Control Board and in the QSA negotiations chaired by Speaker Emeritus Hertzberg; and,

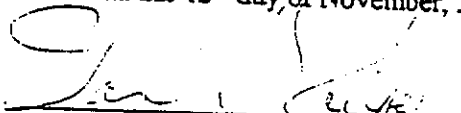
WHEREAS, notwithstanding the County's participation described above and the efforts of other entities to resolve issues concerning the transfer, significant issues still remain unresolved,

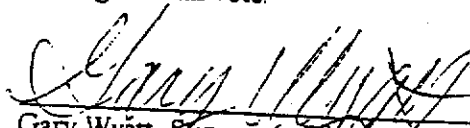
NOW THEREFORE BE IT RESOLVED by the Board of Supervisors that:
The following issues must be resolved before the Board of Supervisors of the County of Imperial can support a proposed water transfer:

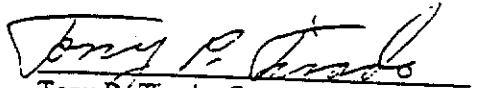
1. A mandatory review of the transfer to be completed prior to the completion of its first 15 years of operation, to include a supplemental environmental impact statement and report, enabling the County of Imperial to secure cancellation or modification of the transfer at that time on the grounds of unacceptable economic or environmental effects in the County of Imperial;
2. Affirmation of the authority of the Imperial County Air Pollution Control District to regulate air quality impacts arising from the fallowing of fields or exposure of Salton Sea bed, with costs of monitoring and mitigation of impacts to be compensated by the water transfer beneficiaries in a manner similar to that enacted in Health and Safety Code section 42316;
3. Commitment from the San Diego County Water Authority to produce at least 50,000 acre-feet annually of desalinated water within its service area, unless shown by a preponderance of evidence to be incapable of attainment;
4. Findings by both the Secretary of Interior and State Water Resources Control Board that the use of Colorado River water to sustain the Salton Sea is both reasonable and beneficial;
5. Affirmation of the authority of the County of Imperial to regulate groundwater extraction from the East Mesa or elsewhere in the County to facilitate the transfer;

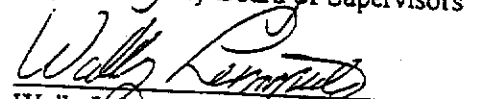
6. Affirmation of the authority of the County of Imperial, through this Board of Supervisors, to determine pursuant to Water Code section 1810 that the transfer as it develops is producing an unreasonable economic or environmental effect within the County of Imperial as the county of transfer origin.

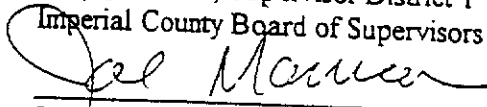
PASSED AND ADOPTED by the Board of Supervisors, County of Imperial, State of California this 12th day of November, 2002, by the following roll call vote.


Hank Kuiper, Chairman
Imperial County Board of Supervisors

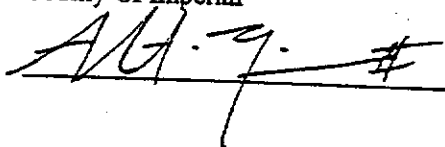

Gary Wyatt, Supervisor District 4
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Tony P. Tirado, Supervisor District 1
Imperial County Board of Supervisors


Wally Leunggruber, Supervisor District 5
Imperial County Board of Supervisors


Joe Maruca, Supervisor District 3
Imperial County Board of Supervisors

ALBERT ESPINOZA
Clerk of the Board of Supervisors
County of Imperial



10-1-03
M.O#17

Resolution No. 2003-90

**RESOLUTION BY THE IMPERIAL COUNTY
BOARD OF SUPERVISORS CONCERNING IID/SDCWA WATER TRANSFER
AGREEMENT AND QUANTIFICATION SETTLEMENT AGREEMENT**

WHEREAS, the Board of Supervisors has reviewed the recently-enacted legislation and more recently-released revised agreements for quantification, transfer, and exchange of Colorado River water, confirming that the County was not part of, and expressly excluded from, the negotiations that produced these materials; and

WHEREAS, the County appreciates the extraordinary efforts that the State of California, through the Governor's office and Legislature, and the four water districts have made to produce consensus among these entities and the Department of Interior; and

WHEREAS, the County also appreciates the benefits that the State and water districts should secure by the successful implementation of these agreements; and

WHEREAS, the County also appreciates the decision of the San Diego County Water Authority not to pursue groundwater extraction from the East Mesa as a component of the IID-San Diego water transfer, and the Authority's commitment as reflected in its notice of preparation to pursue a desalination project within its service area to produce up to 50,000 AFA from that source; and

WHEREAS, not surprisingly for negotiations of which the County was not a part, the resulting legislation and agreements fail to protect the County's interests in addressing and eliminating economic and environmental impacts within Imperial County; and

WHEREAS, if at all possible, the County seeks to avoid challenge to the various agreements, and for that reason the Board of Supervisors requests the following timely actions from the State of California, Imperial Irrigation District (IID), San Diego County Water Authority (SDCWA), and Coachella Valley Water District (CVWD).

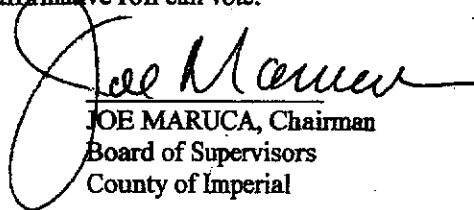
NOW THEREFORE, BE IT RESOLVED AS FOLLOWS,


- I. The County requests that the State of California through the Governor's office or Director of Fish and Game confirm that funds "for environmental mitigation requirements" described and administered pursuant to section 3 of SB 654 can include costs incurred by the County of Imperial to administer and enforce its regulation of transfer-related groundwater extraction, and costs incurred by the Imperial County Air Pollution Control District to administer and enforce its regulation of transfer-related air quality impacts.

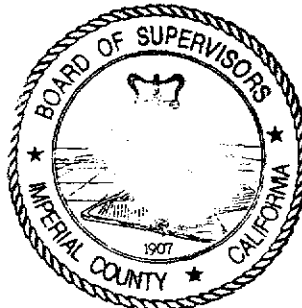
The County appreciates the informal advice from the Department of Fish and Game (DFG) that measures to mitigate air quality or groundwater impacts of the project described in the IID-San Diego Transfer EIR and Addendum are an allowable expense to agencies responsible for mitigating those impacts; and that all claims for such mitigation expenses must be presented to and approved by the JPA created by section 3 of SB 654.

- II. The County therefore requests that the other JPA members (IID, SDCWA, and CVWD) also confirm that funds "for environmental mitigation requirements" described and administered pursuant to section 3 of SB 654 can include costs incurred by the County of Imperial to administer and enforce its regulation of transfer-related groundwater extraction, and costs incurred by the Imperial County Air Pollution Control District to administer and enforce its regulation of transfer-related air quality impacts.
- III. The County also requests that the above confirmatory provisions be enacted as part of clean-up QSA legislation, to be supported by DFG, IID, SDCWA, and CVWD.
- IV. The County requests that IID and SDCWA revise paragraph 2(a) of Exhibit 4 to the Fourth Amendment of the IID-SDCWA Transfer Agreement to define third-party impacts as follows: (i) changes in the after-tax income of individuals or entities employed or doing business in Imperial County not participating in the IID land following program; (ii) changes in the tax receipts of local governments within Imperial County; and (iii) net increases in the costs of public or social services provided by the local governments within Imperial County.
- V. The County requests that the State Water Resources Control Board, either in future proceedings before the Board on the revised transfer, or in settlement of the pending County litigation against the State Board, include removal of the discussion of Water Code section 1810 in the Board's December 2002 order.

PASSED AND ADOPTED, by the Board of Supervisors, County of Imperial, State of California, this 7TH day of October 2003, by the affirmative roll call vote.


JOE MARUCA, Chairman
Board of Supervisors
County of Imperial


ALBERT ESPINOSA, Clerk of
the Board of Supervisors, County
of Imperial, State of California



**RESOLUTION BY THE IMPERIAL COUNTY
BOARD OF SUPERVISORS REGARDING AN ASSESSMENT
OF THE IMPERIAL IRRIGATION DISTRICT'S
ON-FARM FALLOWING PROGRAM
PURSUANT TO WATER CODE SECTION 1013 (b)(2)**

WHEREAS, Imperial Irrigation District staff and County of Imperial staff have worked together over the past few months, including providing updates to the Board of Supervisors, to develop a fallowing plan which adequately addresses the requirements of Water Code Section 1013 (b)(2);

WHEREAS, Section 1013(b)(2) of the California Water Code requires that before the Imperial Irrigation District adopts a land fallowing conservation plan, this Board assess whether the proposed plan includes adequate mitigation measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial;

NOW THEREFORE BE IT RESOLVED, that the Board of Supervisors hereby certifies that the proposed land fallowing conservation plan released by the Directors of the Imperial Irrigation District on March 9, 2004, will include adequate mitigation measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial, subject to the following revisions and conditions:

1. The County of Imperial has challenged the legal adequacy of the Quantification Settlement Agreement (QSA) environmental compliance and of the IID-SDCWA Water Transfer (Transfer) environmental compliance. These challenges and the need for assured mitigation underlying those challenges remain unresolved. Resolution of these issues to the satisfaction of this Board is necessary for a final determination that environmental impacts of the fallowing plan have been adequately mitigated;

2. The County of Imperial has participated in the formation of the Local Entity created under the Transfer Agreement for the express benefit of the County. This Board anticipates that the Local Entity will succeed in identifying and securing compensation for socio-economic impacts produced by the fallowing plan. That success is necessary for a final determination that the economic impacts of the fallowing plan have been adequately mitigated;

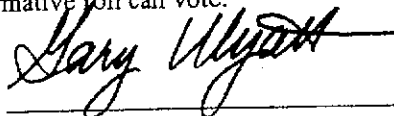
3. The County of Imperial maintains that ultimate responsibility for air quality protection, and mitigation of air quality impacts, reposes in the Imperial County Air Pollution Control District. Paragraph I of Exhibit D to the Agreement should be revised to add a fifth bullet with the following language: "Comply with any lawful conditions required by the Imperial County Air Pollution Control District;"

4. This Board expresses its appreciation to the Imperial Irrigation District for producing a fallowing plan that should, with these conditions, fulfill our expectations to protect both the environment and the economy of Imperial County. This assessment should be construed to authorize the Imperial Irrigation District to adopt the fallowing

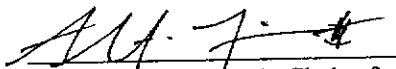
plan with condition 3 above added to Exhibit D of the "Agreement", and in the expectation that during the term of the following plan conditions 1 and 2 will also be realized; and,

5. This assessment is valid to and through June 30, 2005, and will remain in force and effect after that date, until and unless replaced by a subsequent assessment by the County Board of Supervisors based upon conditions then obtaining.

PASSED AND ADOPTED, by the Board of Supervisors, County of Imperial, State of California, this 16th day of March 2004, by the affirmative roll call vote.



GARY WYATT, Chairman
Board of Supervisors
County of Imperial



ALBERT ESPINOZA, Clerk of
the Board of Supervisors, County
of Imperial, State of California

