

**Statement of Water Diversion
FILINGS - SWRCB
Imperial County**

| NAME | APN | DATE SENT TO SWRCB |
|----------------------------------------------|-------------|--------------------|
| Black Swan Properties | 040-420-038 | 03/08/06 |
| Black Swan Properties | 040-420-031 | 03/08/06 |
| Black Swan Properties | 040-420-037 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 052-480-011 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 052-180-028 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 052-210-019 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 051-320-006 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 051-320-007 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 052-190-025 | 03/08/06 |
| Brundy Walter H & Mary R TR | 052-190-001 | 03/08/06 |
| Brundy Walter H & Mary R TR | 052-170-043 | 03/08/06 |
| Brundy Thomas D & Karen D JT | 052-480-012 | 03/08/06 |
| Foster Family CAK Partners | 041-200-005 | 03/08/06 |
| Foster Family GLF Partners 50% & RWF Partner | 041-250-017 | 03/08/06 |
| Foster Family GLF Partners 50% & RWF Partner | 041-250-020 | 03/08/06 |
| Foster Fam GLF & RWF Prtnr 13.665%EA & GL | 041-260-005 | 03/08/06 |
| Foster Family GLF Partners 50% & RWF Partner | 041-250-015 | 03/08/06 |
| Foster Feed Yard | 041-190-001 | 03/08/06 |
| Foster Family GLF Parnters 50% ETAL | 041-190-010 | 03/08/06 |
| Foster Family GLF Partners 50% ETAL | 041-190-020 | 03/08/06 |
| Kovach Charlotte F Trustee 55.25% INT ETAL | 041-140-008 | 03/08/06 |
| Kovach Charlotte F Trustee 55.25% INT ETAL | 041-140-013 | 03/08/06 |
| Layton Ted Eugene & Wendy Ann JT | 050-010-023 | 03/08/06 |
| McCown W F & Liles M M & Phillips C M | 041-350-025 | 03/08/06 |
| McCown W F & Phillips C M & Lilies M M | 050-010-028 | 03/08/06 |
| McCown William F 46.6662% ETAL | 041-350-030 | 03/08/06 |
| Phipps W D & Lester L P & Heller D P | 055-190-036 | 03/08/06 |
| Scaroni Properties, Inc. | 054-260-015 | 03/08/06 |
| Scaroni Properties, Inc. | 054-260-002 | 03/08/06 |
| Scaroni Properties, Inc. | 054-260-003 | 03/08/06 |
| Scaroni Properties, Inc. | 054-260-027 | 03/08/06 |
| Scaroni Properties, Inc. | 054-290-004 | 03/08/06 |
| Sudduth Michael & Janice TRS | 046-090-017 | 03/08/06 |
| Sudduth Michael & Janice TRS | 039-130-006 | 03/08/06 |
| T-7 Cattle Co | 041-260-001 | 03/08/06 |
| T-7 Cattle Co | 041-190-015 | 03/08/06 |
| Thompson Walter J Trustee | 043-310-004 | 03/08/06 |
| Thompson Walter J Trustee | 052-160-016 | 03/08/06 |
| Thompson Walter J Trustee | 052-160-010 | 03/08/06 |
| Thompson Walter J Trustee | 043-310-006 | 03/08/06 |
| Thompson Walter J Trustee | 052-160-011 | 03/08/06 |
| Thompson Walter J Trustee | 052-160-015 | 03/08/06 |
| Thompson Walter J Trustee | 059-020-001 | 03/08/06 |
| All American 33 LLC | 052-190-033 | 5/19/06 |
| All American 33 LLC | 052-190-034 | 5/19/06 |
| Burchett R Dean Trustee | 040-390-012 | 5/19/06 |
| Colace J & S & Colace W & B JT | 026-030-015 | 5/19/06 |

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| Colace J & S & Colace W & B JT | 026-030-016 | 5/19/06 |
| Colace J & S & Colace W & B JT | 026-070-003 | 5/19/06 |
| Colace J & S & Colace W & B JT | 026-070-023 | 5/19/06 |
| Colace J J Jr & S L & Colace W M & B J JT | 020-140-047 | 5/19/06 |
| Colace Joseph & Sally & William & Barbara JT | 026-030-013 | 5/19/06 |
| Colace Joseph & Sally & William & Barbara JT | 025-260-046 | 5/19/06 |
| Colace Joseph John Jr & Sally Lynn | 044-200-069 | 5/19/06 |
| Colace Joseph Jr & Sally JT | 051-390-002 | 5/19/06 |
| Colace Joseph Jr & Sally JT | 051-390-016 | 5/19/06 |
| Colace Joseph Jr & Sally JT | 051-390-017 | 5/19/06 |
| Colace W M & B J 1/2 & Colace J J Jr & S L 1/2 | 052-190-032 | 5/19/06 |
| Elmore Ann Kelley Ranches LTD Partnership | 020-120-040 | 5/19/06 |
| Elmore Ann Kelley Ranches LTD Partnership | 020-120-046 | 5/19/06 |
| Elmore Ann Kelley Ranches LTD Partnership | 020-140-051 | 5/19/06 |
| Elmore Howard & Cindy TR U/T/D 3-12-92 et al | 020-150-037 | 5/19/06 |
| Elmore Howard J 1/2 & Elmore Richard D 1/2 | 020-140-054 | 5/19/06 |
| Elmore John J | 020-140-044 | 5/19/06 |
| Elmore John J | 020-140-055 | 5/19/06 |
| Elmore John J | 020-180-027 | 5/19/06 |
| Elmore John J & Ann K TR 40/400 Int et al | 020-130-012 | 5/19/06 |
| Elmore John J & Ann K TR 40/400 Int et al | 020-130-013 | 5/19/06 |
| Elmore John J & Ann K TR 40/400 Int et al | 020-130-015 | 5/19/06 |
| Elmore John J & Ann K TRS 40/400 Int et al | 020-130-024 | 5/19/06 |
| Elmore John J TR | 020-110-029 | 5/19/06 |
| Elmore John Jameson & Ann Kelley | 020-100-043 | 5/19/06 |
| Elmore John Jameson & Ann Kelley | 020-110-051 | 5/19/06 |
| Elmore John Jameson & Ann Kelley | 020-130-016 | 5/19/06 |
| Elmore John Jameson & Ann Kelley 64% et al | 020-130-009 | 5/19/06 |
| Elmore John Jameson & Ann Kelley TR | 020-130-008 | 5/19/06 |
| Elmore R & R JT 1/2 & Elmore H & C JT 1/2 | 020-140-004 | 5/19/06 |
| Gardonjim Farms Inc (James E Kuhn Rev Tr) | 034-340-006 | 5/19/06 |
| Gardonjim Farms Inc (James E Kuhn Rev Tr) | 052-480-003 | 5/19/06 |
| Gardonjim Farms Inc (James E Kuhn Rev Tr) | 052-480-004 | 5/19/06 |
| Harthill Acres | 020-110-048 | 5/19/06 |
| Harthill Acres | 020-140-046 | 5/19/06 |
| Harthill Acres | 020-140-050 | 5/19/06 |
| Harthill Acres | 020-150-023 | 5/19/06 |
| Harthill Acres | 020-150-040 | 5/19/06 |
| Harthill Acres | 020-170-014 | 5/19/06 |
| Harthill Acres 3/5 & Morgan Michael 2/5 | 020-150-036 | 5/19/06 |
| Harthill Acres 3/5 & Morgan Michael 2/5 | 020-180-018 | 5/19/06 |
| Holtz Walter J | 054-250-024 | 5/19/06 |
| Holtz Walter J & Toni F | 044-530-025 | 5/19/06 |
| Holtz Walter J & Toni F | 044-530-027 | 5/19/06 |
| Holtz Walter J & Toni F | 044-540-011 | 5/19/06 |
| Holtz Walter J & Toni F | 044-550-018 | 5/19/06 |
| Holtz Walter J & Toni F | 052-340-006 | 5/19/06 |
| Holtz Walter J & Toni F | 052-340-009 | 5/19/06 |
| Holtz Walter J & Toni F | 052-350-021 | 5/19/06 |
| Holtz Walter J & Toni F | 052-350-022 | 5/19/06 |

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| Holtz Walter J & Toni F | 052-350-022 | 5/19/06 |
| Holtz Walter J & Toni F | 054-250-019 | 5/19/06 |
| Holtz Walter J & Toni F | 054-250-023 | 5/19/06 |
| Imperial Valley Cheese of California LLC | 051-020-026 | 5/19/06 |
| Imperial Valley Cheese of California LLC | 051-020-032 | 5/19/06 |
| J & J Farms | 034-350-011 | 5/19/06 |
| J & J Farms | 034-350-021 | 5/19/06 |
| J & J Farms | 034-350-030 | 5/19/06 |
| J & J Farms | 034-350-031 | 5/19/06 |
| J & J Farms | 034-350-032 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-017 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-018 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-020 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-021 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-022 | 5/19/06 |
| John Elmore Ranches LTD | 019-010-023 | 5/19/06 |
| John Elmore Ranches LTD | 019-020-013 | 5/19/06 |
| John Elmore Ranches LTD | 019-020-014 | 5/19/06 |
| John Elmore Ranches LTD | 019-020-015 | 5/19/06 |
| John Elmore Ranches LTD | 019-020-016 | 5/19/06 |
| John Elmore Ranches LTD | 019-050-023 | 5/19/06 |
| John Elmore Ranches LTD | 019-050-024 | 5/19/06 |
| John Elmore Ranches LTD | 019-050-025 | 5/19/06 |
| John Elmore Ranches LTD | 019-050-028 | 5/19/06 |
| Kudu Inc | 020-110-031 | 5/19/06 |
| Kudu Inc | 020-130-018 | 5/19/06 |
| Kudu Inc | 020-130-019 | 5/19/06 |
| Kudu Inc 90% et al | 020-140-058 | 5/19/06 |
| Kudu Inc 90% et al | 020-140-059 | 5/19/06 |
| Kuhn Farms | 051-020-033 | 5/19/06 |
| Kuhn Hay | 051-300-035 | 5/19/06 |
| Kuhn James & Heidi | 043-340-012 | 5/19/06 |
| Kuhn James & Heidi | 051-120-061 | 5/19/06 |
| Kuhn James & Heidi | 051-120-075 | 5/19/06 |
| Kuhn James & Heidi | 034-370-017 | 5/19/06 |
| Kuhn James E | 034-310-025 | 5/19/06 |
| Kuhn James E | 034-310-026 | 5/19/06 |
| Kuhn James E & Heidi JT | 043-330-006 | 5/19/06 |
| Kuhn James E & Heidi L JT | 034-340-026 | 5/19/06 |
| Kuhn James E & Heidi L JT | 043-340-010 | 5/19/06 |
| Kuhn James E & Heidi L JT | 051-120-005 | 5/19/06 |
| Kuhn James E & Heidi L JT | 051-120-039 | 5/19/06 |
| Kuhn James E & Heidi L JT | 034-380-020 | 5/19/06 |
| Kuhn James E & Heidi L JT | 034-380-052 | 5/19/06 |
| Kuhn James Edwin | 043-330-008 | 5/19/06 |
| Kuhn James Edwin | 043-402-002 | 5/19/06 |
| Kuhn James for James E Kuhn Rev Tr | 043-340-020 | 5/19/06 |
| Kuhn Jim & Heidi JT | 052-570-006 | 5/19/06 |
| Kuhn Jim & Heidi JT | 043-370-035 | 5/19/06 |
| Margaret Elmore Darnell | 020-150-024 | 5/19/06 |

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| NAME | APN | DATE SENT TO SWRCB |
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| Margaret Elmore Darnell | 020-180-002 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-010-019 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-017 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-018 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-019 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-020 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-021 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-020-022 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-050-026 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-070-022 | 5/19/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea | 019-070-023 | 5/19/06 |
| Morgan Michael W | 040-180-016 | 5/19/06 |
| Morgan Michael W | 040-180-038 | 5/19/06 |
| Morgan Michael W | 040-220-011 | 5/19/06 |
| Morgan Michael W & Deirdre W | 020-120-058 | 5/19/06 |
| Morgan Michael W & Deirdre W | 020-140-052 | 5/19/06 |
| Morgan Michael W & Deirdre W | 020-140-053 | 5/19/06 |
| Morgan Michael W & Deirdre W | 040-180-039 | 5/19/06 |
| Morgan Michael W & Deirdre W | 040-430-012 | 5/19/06 |
| Morgan Michael W & Deirdre W JT | 020-150-008 | 5/19/06 |
| Morgan Michael W & Deirdre W JT | 020-150-009 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-080-012 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-110-005 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-110-006 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-140-013 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-140-014 | 5/19/06 |
| Morgan Michael W & Deirdre Whitcomb | 019-140-015 | 5/19/06 |
| Osterkamp Farms Inc | 044-040-068 | 5/19/06 |
| Osterkamp Farms Inc | 044-040-069 | 5/19/06 |
| Osterkamp Farms Inc | 045-010-001 | 5/19/06 |
| Osterkamp Farms Inc | 045-010-054 | 5/19/06 |
| Osterkamp Farms Inc | 045-010-055 | 5/19/06 |
| Osterkamp Farms Inc | 045-010-063 | 5/19/06 |
| Osterkamp Farms Inc | 045-010-076 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-260-005 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-380-006 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-390-003 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-390-004 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-390-015 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 040-390-016 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 041-180-006 | 5/19/06 |
| Osterkamp Mark N & Marcia H | 041-240-001 | 5/19/06 |
| Osterkamp Mark N & Marcia H JT | 041-240-020 | 5/19/06 |
| R & R Land & Cattle Co | 036-180-008 | 5/19/06 |
| R & R Land & Cattle Co | 036-180-016 | 5/19/06 |
| R & R Land & Cattle Co | 036-180-017 | 5/19/06 |
| R & R Land & Cattle Co | 036-210-003 | 5/19/06 |
| R & R Land & Cattle Co | 036-210-004 | 5/19/06 |
| R & R Land & Cattle Co | 036-210-029 | 5/19/06 |
| R & R Land & Cattle Co | 037-020-004 | 5/19/06 |

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|------------------------------------------|-------------|--------------------|
| R & R Land & Cattle Co | 037-020-005 | 5/19/06 |
| R & R Land & Cattle Co | 046-040-004 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-040-004 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-040-007 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-040-009 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-040-014 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-100-002 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-100-003 | 5/19/06 |
| Rutherford Land & Cattle Co | 040-100-016 | 5/19/06 |
| Rutherford Land and Cattle Co | 040-040-003 | 5/19/06 |
| Rutherford Matthew Lee Trustee | 037-160-021 | 5/19/06 |
| Rutherford Matthew Lee Trustee | 037-160-024 | 5/19/06 |
| Rutherford Matthew Lee Trustee | 046-010-002 | 5/19/06 |
| Rutherford S P & M L TR 3.769% et al | 040-030-015 | 5/19/06 |
| Rutherford S P & M L TR 3.769% et al | 040-030-016 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-020-006 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-020-007 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-030-008 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-030-018 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-050-009 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-060-009 | 5/19/06 |
| Rutherford Stephen F & Maxine L TR | 037-060-014 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-090-006 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-090-007 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-090-022 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-090-023 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-100-001 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-100-003 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-100-005 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 037-110-009 | 5/19/06 |
| Rutherford Stephen P & Maxine L TR | 040-150-001 | 5/19/06 |
| Rutherford Stephen Phillip & Maxine L TR | 037-050-029 | 5/19/06 |
| Strahm E F & R O & C & M F 1/4 ea | 050-050-041 | 5/19/06 |
| Strahm E F & R O & C & M F 1/4 ea | 055-310-001 | 5/19/06 |
| Strahm E F & R O & C & M F 1/4 ea | 059-250-020 | 5/19/06 |
| Strahm Ernest F & Esther L TR 25% et al | 055-290-008 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 041-280-002 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 041-280-005 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 041-290-013 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 041-350-006 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 045-500-005 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-001 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-003 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-019 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-036 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-063 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-064 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-094 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-095 | 5/19/06 |
| Strahm Ernest F & Esther L TRS | 050-040-096 | 5/19/06 |

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| Strahm Ernest F & Esther L TRS 1/4 Int et al | 055-370-005 | 5/19/06 |
| Strahm Ernest F & Esther L TRS 1/4 Int et al | 055-370-015 | 5/19/06 |
| Strahm Ernest F & Esther L TRS 1/4 Int et al | 055-370-016 | 5/19/06 |
| Strahm Ernest F & Esther L TRS 1/4 Int et al | 055-370-017 | 5/19/06 |
| Strahm Ernie & Sons Inc | 045-040-051 | 5/19/06 |
| Strahm Ernie & Sons Inc | 055-240-055 | 5/19/06 |
| Strahm Ernie & Sons Inc | 055-240-057 | 5/19/06 |
| Strahm Michael F & Margaret B TR 1/4 et al | 045-460-004 | 5/19/06 |
| Strahm Michael F & Margaret B TRS | 041-230-015 | 5/19/06 |
| Strahm Michael F & Margaret B TRS 1/3 et al | 045-100-001 | 5/19/06 |
| Strahm Michael F & Margaret B TRS 1/4 et al | 050-020-033 | 5/19/06 |
| Strahm Michael F & Margaret B TRS 1/4 et al | 050-040-004 | 5/19/06 |
| Sugaro Land & Cattle Co | 038-240-014 | 5/19/06 |
| Black Swan Properties | 040-420-018 | 6/15/06 |
| Caston Elsie J Trustee | 020-120-027 | 6/15/06 |
| Caston Elsie J Trustee | 020-160-011 | 6/15/06 |
| Arthur H. Caston Q Tip Trust | 020-160-029 | 6/15/06 |
| Arthur H. Caston Q Tip Trust | 020-170-013 | 6/15/06 |
| Arthur H. Caston Q Tip Trust | 020-170-015 | 6/15/06 |
| Arthur H. Caston Q Tip Trust | 020-180-028 | 6/15/06 |
| Thomson Victor J | 054-250-021 | 6/15/06 |
| Thomson Victor J | 054-160-028 | 6/15/06 |
| Thomson Victor J | 054-160-029 | 6/15/06 |
| Thomson Victor J | 059-030-005 | 6/15/06 |
| Vessey Jon J & Darla Wyatt Trustees | 055-460-007 | 6/15/06 |
| Vessey Jon J & Darla Wyatt Trustees | 055-460-005 | 6/15/06 |
| Vessey and Company Inc | 055-380-031 | 6/15/06 |
| Vessey and Company Inc | 055-380-007 | 6/15/06 |
| Vessey and Company Inc | 055-380-005 | 6/15/06 |
| Vessey and Company Inc | 055-380-003 | 6/15/06 |
| Vessey Land Co LLC | 055-340-030 | 6/15/06 |
| Vessey and Company Inc | 055-330-028 | 6/15/06 |
| Vessey and Company Inc | 055-330-027 | 6/15/06 |
| Vessey and Company Inc | 055-320-005 | 6/15/06 |
| Vessey Jon J & Darla Wyatt Trustees | 055-240-046 | 6/15/06 |
| Vessey & Company Inc | 055-180-008 | 6/15/06 |
| Vessey and Company Inc | 055-080-035 | 6/15/06 |
| Vessey and Co, Inc | 055-080-030 | 6/15/06 |
| Vessey & Co Inc | 045-480-014 | 6/15/06 |
| Vessey & Company Inc | 045-430-018 | 6/15/06 |
| Elmore John J & Ann K | 020-120-004 | 08/04/06 |
| Elmore John J & Ann K | 020-120-034 | 08/04/06 |
| Imperial Valley Chaees of California LLC | 051-020-032 | 08/04/06 |
| Jack Bros & Mc Burney Inc | 035-010-006 | 08/04/06 |
| Jack Bros & McBurney Inc 81.25% et al | 035-020-004 | 08/04/06 |
| Jack Brothers & McBurney Inc 75% et al | 035-020-020 | 08/04/06 |
| Jack Bros & Mc Burney Inc | 035-060-001 | 08/04/06 |
| Jack Bros & McBurney Inc | 035-070-006 | 08/04/06 |
| Jack A N & Sims V J Jr Co-TR 25% et al | 036-020-023 | 08/04/06 |
| Jack A N & Sims V J Jr Co-TR 25% et al | 036-020-024 | 08/04/06 |

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| Jack A N & Sims V J Jr Co-TR 25% et al | 036-150-001 | 08/04/06 |
| Jack Bros & McBurney Inc | 036-150-003 | 08/04/06 |
| Jack Bros & McBurney Inc | 036-180-013 | 08/04/06 |
| Jack Bros & McBurney Inc | 036-180-014 | 08/04/06 |
| Jack Bros & McBurney Inc | 036-210-018 | 08/04/06 |
| Jack Bros & McBurney Inc | 036-210-019 | 08/04/06 |
| Jack Bros Inc 62% & Jack A N 19% et al | 037-130-050 | 08/04/06 |
| Jack Bros and McBurney Inc | 044-040-033 | 08/04/06 |
| Jack Bros & McBurney In 1/2 Int & Jack A C | 044-040-061 | 08/04/06 |
| Jack Neal Co-Tr & Sims Virgil Jones Jr Co-T | 044-040-070 | 08/04/06 |
| Jack A N 50% & Jack A N Trust C 50% | 044-040-080 | 08/04/06 |
| Morgan M W & Harthill M E & Mason J 1/3 ea0 | 019-150-029 | 08/04/06 |
| Harthill Acres 3/5 & Morgan M W & D W JT 2/5 | 020-150-039 | 08/04/06 |
| Schaffner Emil & T A 1/2 & R A & R D 1/2 | 041-270-014 | 08/04/06 |
| Schaffner Dairy Inc | 041-280-015 | 08/04/06 |
| Schaffner M & Schaffner E R & Schaffner R A TR | 041-320-038 | 08/04/06 |
| Schaffner Dairy Inc | 044-040-013 | 08/04/06 |
| Schaffner Dairy Inc | 044-040-025 | 08/04/06 |
| Schaffner Emil R et al | 044-040-032 | 08/04/06 |
| Schaffner Dairy Inc | 044-040-072 | 08/04/06 |
| Schaffner M & Schaffner E R & Schaffner R A TR | 045-010-017 | 08/04/06 |
| Schaffner Dairy Inc | 045-010-018 | 08/04/06 |
| Schaffner Farms | 045-010-079 | 08/04/06 |
| Schaffner M & Schaffner E R & Schaffner R A TR | 045-020-016 | 08/04/06 |
| Schaffner Dairy Inc | 045-020-030 | 08/04/06 |
| Lowrey Christine M & Lyerly Debra O et al | 045-020-043 | 08/04/06 |
| Schaffner Dairy Inc | 045-040-069 | 08/04/06 |
| Kellerman Andrew G & Victoria J 25% | 045-100-076 | 08/04/06 |
| Kellerman Andrew G & Victoria J 25% | 045-100-077 | 08/04/06 |
| Schaffner M & Schaffner E R & Schaffner R A TR | 045-450-012 | 08/04/06 |
| Tac Land LLC | 038-020-009 | 08/04/06 |
| Tac Land LLC | 038-050-010 | 08/04/06 |
| Tac Land LLC | 038-110-013 | 08/04/06 |
| Tac Land LLC | 039-030-022 | 08/04/06 |
| Tac Land LLC | 039-030-023 | 08/04/06 |
| Wavra V H 1/2 & Wavra J F & T L JT | 040-010-006 | 08/04/06 |
| Wavra V H 1/2 & Wavra J F & T L JT | 040-010-034 | 08/04/06 |
| Wavra Clara Trustee | 048-010-007 | 08/04/06 |
| D'Arrigo Bros Co | 020-160-017 | 12/07/06 |
| D'Arrigo Bros Co | 020-190-009 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 036-190-010 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 040-010-004 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 040-010-029 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 047-010-001 | 12/07/06 |
| Cameron Paul T & Deborah S Trustees | 047-410-002 | 12/07/06 |
| Cameron Paul Succ Trustee | 047-410-006 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 049-250-002 | 12/07/06 |
| Cameron Paul T & Deborah S Hannon TRS | 049-250-003 | 12/07/06 |
| McCown William F et al | 041-350-026 | 12/07/06 |
| Liles Margaret M & Phillips Catherine M | 041-350-029 | 12/07/06 |

**Statement of Water Diversion
FILINGS - SWRCB
Imperial County**

| NAME | APN | DATE SENT TO SWRCB |
|--------------------------------------------|-------------|--------------------|
| McCown WM F 1/2 Int & Phillips Catherine M | 041-350-031 | 12/07/06 |
| Hawk H Stanley & Lois M Trustees | 059-260-018 | 12/07/06 |
| Hawk John and Susan | 041-350-023 | 12/07/06 |
| Hawk Pauline E Trustee | 045-010-019 | 12/07/06 |
| Hawk Pauline E TR 1/2 & Sperber M A TR | 045-010-020 | 12/07/06 |
| Hawk John Barry & Susan Marie Trustees | 055-090-042 | 12/07/06 |
| Hawk Pauline E Trustee | 055-280-009 | 12/07/06 |
| Hawk Pauline E Trustee | 055-280-012 | 12/07/06 |
| Hawk John B 50% & Pauline E Trustee | 055-380-041 | 12/07/06 |
| Hawk Pauline E Trustee | 055-380-042 | 12/07/06 |
| Mitosinka A Stephen Trustee | 059-260-001 | 12/07/06 |
| Hawk P E TR 1/2 & Hawk H S & L M TR 1/2 | 059-280-006 | 12/07/06 |
| Decota Enterprises | 022-130-009 | 12/07/06 |
| Decota Enterprises | 054-260-011 | 12/07/06 |
| Tagg Joseph L & Judith A JT | 044-230-023 | 12/07/06 |
| Tagg Joseph L & Judith A JT | 055-010-004 | 12/07/06 |
| West-Gro Farms Inc | 052-120-016 | 12/07/06 |
| West-Gro Farms Inc | 054-310-004 | 12/07/06 |
| West-Gro Farms Inc | 059-120-003 | 12/07/06 |
| West-Gro Farms Inc | 059-120-004 | 12/07/06 |
| | | |
| TOTAL STATEMENTS: 367 | | |

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David L. Osias

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Direct Dial: 619.235.1526 File Number: I4161-101/SD646984.01

May 12, 2006

VIA OVERNIGHT MAIL

Victoria A. Whitney
Division Chief
State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95812-2000

Re: Statements Of Water Diversion And Use Filed By Patrick Maloney

Dear Ms. Whitney:

It has come to the attention of our client the Imperial Irrigation District ("IID") that attorney Patrick Maloney's office has been filing with the State Water Resources Control Board ("SWRCB") numerous "Statements Of Water Diversion And Use" on behalf of certain irrigation water users in the Imperial Valley, allegedly pursuant to under Water Code Sections 5100 *et seq.* ("Statements"). We were not served with copies, but have acquired a small, but probably representative, sample of 14 filings, and have found them to be rife with factual misstatements and omissions, as well as incorrect legal positions. Because each filed Statement we reviewed was virtually identical, we assume all of the Statements contain the same flaws.

As detailed below, this letter states IID's position that the filing of the Statements is unauthorized by applicable law and the processing of the Statements at this time is unwarranted.

I. General Overview

Before getting into the details of why the Statements should be ignored, it is first useful to review the purpose and meaning of Water Code Sections 5100 *et seq.* and IID's water diversions from the Colorado River.¹

¹ The facts noted herein have been admitted as evidence in prior extensive SWRCB adjudicatory hearings, and referenced in numerous SWRCB decisions (Decision 1600, WRO 88-20, and Revised WRO 2002-013).

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A. The Water Code Diversion Notice Statutes

The Statements have been filed under Water Code Sections 5100, *et seq.* Review of the relevant statutes is helpful in understanding why the Statements are being misused by Mr. Maloney and his clients.

In 1965, California adopted legislation requiring any person who diverts surface water after December 1, 1965, to file a Statement with the SWRCB prior to July 1 of the succeeding year. Water Code § 5101. The Statements are required unless the diversion is: (a) from a spring that does not flow off the property on which it is located; (b) covered by an application, permit or license to appropriate filed with the SWRCB; (c) included in a Section 4999 notice (recordation of water extractions and diversions); (d) regulated by a watermaster appointed by the Department of Water Resources ("DWR"); (e) reported by DWR in a hydrologic data bulletin; (f) included in the consumptive use data for the delta lowlands; (g) included in annual reports filed with a court or the SWRCB related to a final judgment determining water rights; or (h) in compliance with Water Code § 1226 (stockponds).² *Id.*

The Water Code, which instructs diverters to file separate statements for each point of diversion, provides a list of required information that needs to be included on the form prepared by the SWRCB. Water Code §§ 5102 and 5103. The necessary information includes: (a) the name and address of the diverter; (b) the name of the stream or other source of water from which water is being diverted and the next major stream or other body of water to which the source is tributary; (c) the place of diversion; (d) the capacity of the diversion works and of any storage reservoir, as well as the months in which water was used in the preceding calendar year; (e) the purpose of use; (f) a general description of the area in which the water is used; and (g) the year the diversion commenced, if known. Water Code § 5103. After filing a statement, supplemental statements are required on a triennial schedule. Water Code § 5104.

If a person fails to file a required statement, the SWRCB may, at the expense of that person, investigate and determine in writing the required facts, provided that the SWRCB first provide notice and an opportunity to cure the failure. Water Code § 5105.

Although the filing process is clearly laid out by the Legislature, it is important to note that filed statements and SWRCB processing do *not* establish or constitute evidence of a right to divert or use water. Water Code § 5106(a). However, the SWRCB may rely on the names and addresses included in the statements for noticing SWRCB proceedings; and the SWRCB may rely on

² Recently introduced legislation, SB 820 and SB 1640, sought to edit certain § 5101 exemptions. Although SB 820 was vetoed by the Governor for unrelated reasons on October 7, 2005, SB 1640 remains in the Senate at the time of this writing.

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information included in statements for purposes of approving appropriation permits of others. Water Code § 5106(b) and (c).

Making a *willful* misstatement in a filed statement is a misdemeanor, punishable by a fine not to exceed \$1,000 or by imprisonment, or both. Water Code § 5107(a). Making only a *material* misstatement may create civil liability and be punished by a fine not to exceed \$500 for each violation, depending on the extent of harm caused by the violation, nature and persistence of the violation, length of time over which the violation occurred and any corrective action taken by the violator. *Id.* at (b) and (c). Significantly, however, filed statements are for informational purposes only, and failure to file a statement or the inclusion of an error in the information filed will not have any legal consequences, other than those discussed above. Water Code § 5108.³

The requirement that diverters file statements has been tangentially discussed in very few SWRCB opinions. For instance, in response to objections to a temporary diversion permit, the SWRCB stated that, "[a]ll parties who divert surface or subterranean streamflow under claim of riparian right are required by law to file a Statement of Water Diversion and use with the [board]." *See*, WRO 95-8, 1995 WL 441955 *4. Because no statements were on file in that matter, the SWRCB was unaware of any riparian diverters in the subject reach of the Mattole River. *Id.*; *see also* WRO 95-10, 1995 WL 464902.

When presented with petitions for reconsideration of a wastewater discharge order, the SWRCB commented that some persons who claimed water rights in the subject water body were not notified of the request to change the discharge because no Statements were on file with the SWRCB for those claimants. *See*, WRO 95-9, 1995 WL 418673 *4. Without deciding whether lack of notice rendered the hearing unfair, the SWRCB upheld the Division of Water Rights' decision to grant the reconsideration request because the notice that was issued was inadequate for other reasons. *Id.*; *see also*, WRO 2000-013, 2000 WL 33777668; WRO 2003-014, 2003 WL 24030253.

In addition to the above agency opinions, Water Code Sections 5100 *et seq.*, are discussed in statutes and regulations regarding water appropriation. Specifically, the Water Code allows the SWRCB to cancel a protest based on either interference with a prior right or injury to a legal user of water for failure to provide information requested by the SWRCB, including information that is required to be included in a filed statement during any period after the protest is filed. Water Code §§ 1335 and 1703.6. Similarly, if a person is affected by a violation of any term or condition of a permit or license, 23 Cal.Code Regs. Section 820 permits that person to file a complaint with the SWRCB. *Id.* The regulation states that the complaint shall indicate whether a statement is required

³ SB 820 and SB 1640 both sought to delete the informational purpose provision of this part, and expand the civil liability provision to apply to a person who fails to file a statement. In addition, both bills sought to make persons who fail to file statements ineligible for funds made available under any program administered by the board, department or California Bay-Delta authority.

to be filed, and if it has been done. *Id.* at (d). If required and not filed, the complaint shall set forth the reasons for failing to file the statement. *Id.*

Thus, in summary, the statutory scheme requires **surface water diverters** to file informational statements describing their diversions (with some exemptions), and provides for civil and criminal liability if misstatements are made.

B. IID Colorado River Diversions

On November 5, 1930, the Secretary of the Interior requested the California Division of Water Resources to recommend a proper method of apportioning the water which California was entitled to receive under the 1922 Colorado River Compact and the Boulder Canyon Project Act. Thereafter, a number of users and prospective users of Colorado River water, including IID, entered into the Seven-Party Agreement on August 18, 1931. The Seven-Party Agreement provided a schedule of apportionments and priorities, and the parties requested "the Division of Water Resources to, in all respects, recognize said apportionments and priorities in all matters relating to State authority and to recommend the [apportionment and priority provisions] to the Secretary of the Interior of the United States for insertion in any and all contracts for water made by him pursuant to the terms of the Boulder Canyon Project Act. . . ."

Pursuant to the provisions of the Boulder Canyon Project Act adopted in 1929, the California Limitation Act⁴, and the Secretary's contracts, California was apportioned 4.4 million AFY out of the lower basin allocation of 7.5 million AFY, plus 50% of any available surplus water. The further apportionment of California's share of Colorado River water was made by the Secretary of the Interior by entering contracts with California rights under the Seven Party Agreement. The Secretary entered into a permanent service water delivery contract with IID on December 1, 1932. IID's contract with the Secretary expressly incorporated the provisions of the Seven-Party Agreement, as did all the Secretary's contracts with all the California agencies.

After the Seven-Party Agreement and the federal contract were executed, the State of California then granted appropriative right permits to IID in 1950. Here is a summary of the issued permits, which permits also expressly include all the apportionment and priority provisions of the Seven-Party Agreement:

⁴ Act of March 4, 1929; Ch. 16, 48th Sess.; Statutes and Amendments to the Codes, 1929, p. 38-39.

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| <u>PERMIT NUMBER</u> | <u>AFY</u> | <u>PLACE OF DIVERSION</u> | <u>PURPOSE OF USE</u> |
|----------------------|--------------|---------------------------|-------------------------|
| 7643 | 7,239,680.25 | Imperial Dam | Irrigation and domestic |
| 7649 | 5,791,744.2 | Imperial Dam | Power-related |
| 7648 | 4,343,808.15 | Imperial Dam | Power-related |
| 7647 | 5,791,744.2 | Imperial Dam | Power-related |
| 7646 | 5,791,744.2 | Imperial Dam | Power-related |
| 7645 | 5,791,744.2 | Imperial Dam | Power-related |
| 7644 | 9,411,584.33 | Imperial Dam | Power-related |
| 7651 | 1,447,936.05 | Imperial Dam | Power-related |

As one can see from the Permits, IID's point of diversion for Colorado River water is Imperial Dam, located on the Colorado River near Mexico. From that dam, IID diverts water into the All-American Canal, and IID then transports the water to its service area, where it delivers the water to its customers via its 1,400-mile canal system.

II. Errors And Omissions In The Statements

A. Factual Errors And Omissions

The Statements are filled with significant factual errors and omissions. Attached to this letter as Exhibit "A" is a spreadsheet detailing these problems. Discussion of some of the major problems follows.

First, the Statements list the diverter at the Colorado River (All-American Canal) as someone other than IID (presumably a landowner or farming tenant). This is patently false. As the SWRCB knows, IID is the entity which diverts water from the Colorado River for use in the Imperial Valley. The term "Diversion" is defined in Water Code Section 5100(a) as meaning diversions of water from "a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water" The only natural source of water referenced in the filed Statements is the Colorado River, and IID is the diverter from the Colorado River. Water Code Section 5102 limits the right to file a statement to the actual person diverting, or an agency diverting on behalf of a specific person. Here, IID is diverting from the Colorado River, does so as a California irrigation district and not on behalf of any specified person at their request. IID is not required to file statements under

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Sections 5100 *et seq.* because it is exempt under Section 5101(b); however, the IID has filed Statements of Diversion as a pre-1914 water right holder. The persons who filed the Statements have no statutory standing to file Statements.

The Statements seek to avoid this lack of standing by alleging that IID diverts at Imperial Dam for the benefit of all landowners, and then the Statement filers allegedly individually *redivert* at the location of IID's delivery canal. This is nonsense. The IID delivery canals are man-made structures owned and operated by IID. As such, they do not come under the purview of Water Code Sections 5100 *et seq.* The claim that the filers are "diverting" water from IID's canals is akin to a resident of Los Angeles claiming to "divert" water from the City's pipe in the street outside their home. There is no "diversion," because: (a) there is no surface water diversion other than that by IID; and (b) the filers do not "divert" water from IID's infrastructure. IID delivers water to the farmers' headgates as part of IID's providing water service to water users in the IID service area.

Also, the name of the filer may not even be accurate as such relates to the land listed. For example, in the current litigation between IID and Mr. Maloney's clients (JCCP Case No. JC4353), Mr. Maloney was alleging for his clients that as landowners they owned the Colorado River water rights. However, in some instances the complaint alleged that his clients merely had a tangential interest in the land (such as a shareholder in the corporation that actually owned the land). Judge Candee agreed with IID's Demurrer on this point (copy enclosed) deciding that accurate descriptions of real owners was required. Thus, it is highly likely that some of the names on the Statements may not be the actual owners or tenants of the land listed on the Statements.

Second, the filers of the Statements leave blank the box in which the SWRCB asks if the water is being diverted pursuant to a riparian claim, a Pre-1914 right, or "Other(explain)." The form is thus fatally incomplete and cannot be corrected because the filers are not diverting at all and have no water right to describe; IID alone holds the Colorado River water rights.

Third, the filers state the "point of diversion" as their assessor parcel number (Line "D" on the SWRCB form). No diversions of surface water under Water Code Section 5100 *et seq.* take place at these parcel numbers, but only many miles to the east at Imperial Dam (by IID). The filers also state in Footnote 2 that they divert water hundreds of miles away at the Whitsett Intake at Lake Havasu. This "fact" is also facially false.

Fourth, the "areas of use" section in "Footnote 7" in the Statements, rather than describing where water is actually being used by the signatory, is instead some sort of sketchy legal treatise by Mr. Maloney about where he believes his clients can sell Colorado River water if they can wrest control from IID, including -- apparently -- Mexico (*see* reference to NAFTA), as well as San Diego County and the service area of The Metropolitan Water District. Although several of the filers have addresses in MWD's service area, none of them use Colorado River water that they themselves divert

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in that location. The query on the form is not where the filer thinks he might possibly have a legal right to use the water someday; it asks where the water is actually being used now.

Fifth, the answer to the form question about conservation efforts fails to describe at all what the filer is doing, but instead cites to a footnote (8) that generically describes the conduct of the entire farming populace of the Imperial Valley regarding conservation efforts that are or could be utilized. Again, this is an incorrect and incomplete response to the question on the form.

B. Legal Misstatements

The Statements are predicated upon a fundamental legal flaw, consistently but erroneously asserted by Mr. Maloney, that landowners in the IID service area own the water rights to the Colorado River water separate and apart from IID, and that they have or can sever such rights from IID. Such claims are directly asserted in the coordinated litigation filed by Mr. Maloney on behalf of many of these filers as part of an alleged class action (*see* enclosed pleadings), and they are referenced in the Statements in the "Claim of Right" footnote section. The SWRCB should note that the filers, via their attorney Mr. Maloney, claim to have allegedly unilaterally terminated IID's Colorado River water rights and IID's status as an irrigation district with responsibilities to provide water service, as alleged in their Cross-Complaint in (original) Imperial County Superior Court Case No. ECU01649, ¶ 58 (copy enclosed). Also, it should be pointed out that many of the filers of the Statements, as part of a claimed "class," contend that their rights to the Colorado River water allow them to transfer it wherever they desire, and they ask the Superior Court for a declaration to this effect. Imperial County Superior Court Case No. ECU01649, ¶¶ 69-77. Thus, the SWRCB may find it reasonable to await the court's rulings on this fundamental assertion before taking any action to process the Statements.

IID strongly disputes these water right allegations. IID holds legal title to all its water and all water rights in trust as a California irrigation district for water users within the District. California Water Code §§ 20529 and 22437; *Bryant v. Yellen*, 447 U.S. 352, 371 (1980), fn.23. The right held by the landowners is not to Colorado River water, but only to water service from IID. This was clearly stated by the U.S. Supreme Court in *Bryant v. Yellen* at fn. 23: "As beneficiaries of the trust, the landowners have a legally enforceable right, appurtenant to their lands, to continued service by the District." (Emphasis added.) IID holds all the water rights, water permits and the federal delivery contract. The landowners have only the right to service.⁵

Furthermore, in 1933, the Superior Court of California validated IID's delivery contract with the United States. *See* enclosed 1933 Judgment and related orders from the Imperial County Superior Court. Under California law, a validation judgment is "binding and conclusive, as to all matters

⁵ Although having a right to service may or may not create certain rights as a "legal user of water," a right to service does not create a person that is diverting water from a surface water source.

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therein adjudicated or which at that time could have been adjudicated, against the agency and all other persons, . . ." and "shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive." California Code of Civil Procedure § 870(a). If the filers or their predecessors-in-interest wanted to contest IID's status as water right holder and diverter into the All-American Canal, they had to raise such challenge in that validation case. They did not, and are now legally barred from doing so.

C. Misrepresentations By Maloney's Firm In Past

The SWRCB would be wise to review the content of the Statements prepared by the Maloney law firm with some degree of skepticism. The principals of the Maloney firm were severely chastised by the State Bar for previously having materially misled the Superior Court in another case. This history of discipline is relevant to the degree of credibility the SWRCB should assume regarding the accuracy of the Statements. The sanctioned misrepresentations by the Maloney firm involved claims of ownership, standing, and governance by a dissenting group of tribal members.

The State Bar Court issued a January 14, 2005, Opinion on Review (enclosed), *In the Matter of Patrick Joseph Maloney, Jr., and Thomas Steven Virsik* (Review Department of the State Bar Court, 2005) Case Nos. 00-O-14000; 00-O-14001 (Consolidated); 2005 Calif. Op. LEXIS 2 [*Recommended discipline imposed by California Supreme Court, Case Nos. S132860 (Maloney, 90-day actual suspension) and S132861 (Virsik, 60-day actual suspension)*]. The numerous misrepresentations to the Superior Court and the disciplinary review officers are detailed in the opinion. IID believes the SWRCB should keep that record in mind in deciding its course of action.

D. Conclusion

The persons filing the Statements claiming to divert Colorado River water have filed facially incomplete and incorrect filings. Those persons do not divert the Colorado River water; IID does under its established state and federal water rights. The State should not countenance the factual and legal falsehoods being perpetrated by the Statements by processing them.

III. Proposed SWRCB Response

Because of the material misstatements and omissions in the filings, IID believes that the SWRCB should consider the following courses of action: (a) refuse to process the Statements because they are incomplete and facially false and hold them as unprocessed filings until all litigation between Maloney's clients and IID is concluded; (b) consider conducting an investigation with such investigation to be paid for by the filers, as required by Water Code Section 5105; and/or (c) give the filers the opportunity to withdraw their Statements such that if the investigation confirms the incompleteness, errors and misrepresentations described by IID, the filers could avoid the \$500 civil liability per Water Code Section 5107.

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A. Holding The Statements Without Processing Them

The SWRCB ought to simply hold the Statements without processing them. This option makes sense because the Statements are so inaccurate (*see above*) that they should not be processed. Even ministerial tasks by governmental agencies should not be performed when incorrect or missing information is submitted, as is the case here. *See Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 151-154 (submittals have every right to be rejected if incomplete); *Wheelright v. County of Marin* (1970) 2 Cal.3d 448, 456-457 (duty to reject spurious filing); *Myers v. Patterson* (1987) 196 Cal.App.3d 130, 136 (no duty to accept filing in improper form); and *Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308, 317 (mandate cannot compel acceptance of filing when it does not comply with law). Additionally, holding the Statements without processing them makes sense until the litigation by many of those same filers is concluded.

B. SWRCB Investigation

Water Code Section 5105 allows the SWRCB to investigate facts related to the filing, and to charge the filer for it. The SWRCB could send a notice to the filers that because an investigation of the facts alleged in the Statements will be necessary, the filers must agree to post the cost of such investigation before the SWRCB will proceed. The SWRCB could then, at the filers' expense, gather whatever information it needed from any persons (including IID and the filers) before proceeding further.

C. Opportunity To Withdraw, And Penalties For Failure

Because the Statements are intentionally facially incomplete and in error, and based upon the SWRCB's extensive knowledge and past adjudications as to IID's water rights, the SWRCB might choose to ask the filers to withdraw the Statements, or face possible civil liability, as allowed by the statute. The SWRCB has no obligation to accept false diversion statements, and if the filers refuse to honor a request to withdraw the statements, they should bear the penalty of choosing to demand the processing of their false claims.

In support of whatever course of action the SWRCB decides to take, along with this letter IID provides the following materials, all of which have been part of the administrative record of one or more hearings before the SWRCB on IID's water rights:

1. Seven-Party Agreement;
2. IID's federal delivery contract;
3. IID's Colorado River state appropriation permits;

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Attorneys at Law

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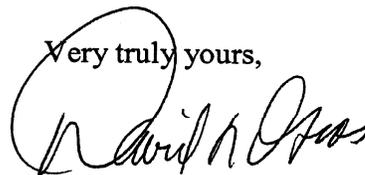
4. SWRCB Decision 1600;
5. SWRCB WRO 84-12;
6. SWRCB WRO 88-20;
7. SWRCB Revised WRO 2002-013;
8. The various currently operative Complaints, Cross-Complaints, and Writ petitions filed by Maloney and his clients in the QSA Cases, JCCP 4353 currently pending in Sacramento County Superior Court;
9. The stay Order currently in effect issued by the Third Appellate District; and
10. January 14, 2005 Opinion on Review, *In the Matter of Patrick Joseph Maloney, Jr., and Thomas Steven Virsik* (Review Department of the State Bar Court, 2005) Case Nos. 00-O-14000; 00-O-14001 (Consolidated); 2005 Calif. Op. LEXIS 2 [*Recommended discipline imposed by California Supreme Court, Case Nos. S132860 (Maloney, 90 day actual suspension) and S132861 (Virsik, 60 day actual suspension)*].
11. The 1933 IID validation Judgment and associated orders.
12. Judge Candee's ruling on IID's Demurrer as to standing in the QSA Cases, JCCP 4353.

D. Conclusion

In summary, the Statements are materially deficient both as factual submittals, and for their legal contentions. IID believes that the Statements should not be processed by the SWRCB.

If you have any questions, please feel free to call me.

Very truly yours,



David L. Osias

DLO:mjh
Enclosures

cc: Dana Heinrich, Esq.
Clifford T. Lee, Esq.
Patrick Maloney, Esq.

LAW OFFICES OF
PATRICK J. MALONEY

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THOMAS S. VIRSIK.

May 16, 2006

Victoria A. Whitney
Division Chief
Division of Water Rights, SWRCB
P.O. Box 100
Sacramento, CA 95812

Re: Statements of Water Diversion
Colorado River – Imperial County

Dear Ms. Whitney,

This office is in receipt of a letter from IID dated May 12, 2006 (by David Osias) regarding various Statements of Water Diversion submitted by clients. That letter speaks in terms of "filings." Staff had informed us that the Statements were not yet filed. In fact, we had transmitted material just last week and have been preparing modifications to maps and other parts of the forms based on staff direction. If the Statements have in fact been filed, please return to us at least the face pages bearing a stamp or number showing so.

If the Statements are not yet filed, how did IID obtain copies of what was submitted to the SWRCB? While our clients have made no secret of the preparation and their efforts in filing the Statements (see e.g., the January 30, 2006 letter to Mr. Chrisman of the DWR), we had not publicly released the actual Statements. Is IID privy to internal SWRCB materials, i.e., pre-filing processes? If so, our clients make demand for the same access and materials under the California Public Records Act.

We had spoken to staff two years ago about filing Statement for Colorado River diversions. Our initial batch of Statements was sent on or about March 8, 2006 and since that time we have had multiple contacts with staff about the Statements. Staff indicated that the Statements were statutorily appropriate, but sought certain specific clarifications to aid in processing, which we are providing. We also noted an error with the first batch, and submitted certain replacements.

If the SWRCB desires, we can provide a detailed response to the various statements of error, material omissions of IID's statements before the Board, irrelevant claims, threatened criminal and civil liability, and legal argument contained in IID's letter. For example, while IID complains that certain detailed water use information is missing, it failed to state that when our clients asked for that information, IID refused to provide it (and a simple web search confirms that IID has the information readily available). Or, that IID is apparently unaware of

longstanding SWRCB practice to file Statements by landowners who are “redirecting” water that is initially diverted by a local agency pursuant to a permit or license some distance away (e.g., Tanimura & Antle’s Statements in the Salinas Valley when the initial diversion is from permitted reservoirs 150 miles away). Or perhaps most notably, that our clients assert pre-1914 rights, i.e., rights over which the SWRCB exercises no jurisdiction (see WRO 2002-13).

Our clients do not wish, however, to turn an administrative activity into an adjudicative one, much less a multi-stage tug of war. The newest Statements contain substantially more detailed maps at the request of staff. Other changes have been made, too, that may assist IID in reassessing its position with respect to the Statements. Our clients believe it is in the interest of efficiency for IID to take ample time and resources to assess its positions in light of the Statements now being presented, after staff input, rather than the initial and now modified batch. If staff has further questions, we can address those. We are providing IID with this letter (1) copies of several (42) current Statements of the next batch (approx 200) to be sent to the SWRCB so that IID may have the benefit of the improvements suggested by SWRCB staff and (2) the most recent written communication to staff (the electronic document is on a CD). (The exemplars do not contain signatures, but otherwise are the same as those to be submitted to the SWRCB).

Once IID has had the opportunity to consider those materials and SWRCB staff has completed its own inquiry, we can provide a point-by-point response to the May 12, 2006 letter. If you prefer a more immediate response, please let us know.

We are sending a copy of this letter to Mr. Lee of the Attorney General’s office since IID believed it appropriate to include him in this exchange.

Sincerely

/S/

PATRICK J. MALONEY

c.

Dana Heinrich

Clifford Lee

Les Grober (SWRCB)

David Osias (IID)

Encl. to IID only:

Elmore (42) Statements (w/o signatures)

May 9, 2006 letter to Les Grober (SWRCB)

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THOMAS S. VIRSIK

August 30, 2006

Mr. Les Grober
Division of Water Rights
1001 I Street
Sacramento, CA 95814

Re: Statements of Water Diversion
Colorado River – Imperial County

Dear Mr. Grober,

Enclosed is a copy of an August 23, 2006 letter received from counsel for Imperial Irrigation District, denying various individuals' requests for records of their own water use. Although not all of the listed individuals have to date filed Statement of Water Diversion, the sweeping tenor of IID's refusal to release individuals' water delivery records is applicable to all Imperial County–Colorado River Statements that have or will be filed. As may be obvious from the letter, to the extent that staff may question any specific water use figures of current or future Statements, the filing parties are unable to provide better records as a result of IID's policy.

Sincerely

PATRICK J. MALONEY

Encl.

c. Jeffrey Garber, IID

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THOMAS S. VIRSIK

April 22, 2010

Victoria A. Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: Statements of Water Diversion
Colorado River – Imperial County

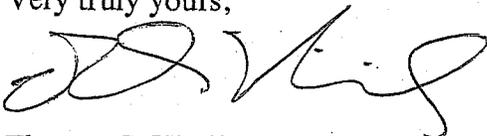
Dear Ms. Whitney:

Beginning in March 2006 and continuing through December 2006, this office presented over 350 statements to the SWRCB for filing on behalf various clients that use Colorado River water in the Imperial Valley. To date not a single statement has been filed. Since none of the statements have been returned to our office, we know the statements are still in the Board's possession so we are not sending additional copies. A list of all statements sent to the Board is enclosed.

The Legislature's passage of SB 8 (the amendments to Water Code §§ 5100, et seq), made effective starting February 2010, has brought those statements to the fore. Both our clients and the SWRCB are now obligated to follow the detailed and mandatory requirements of SB 8. Accordingly, we demand on our clients' behalf that the statements already presented be processed and filed as of the date of their receipt, i.e., starting in 2006. Given the substantial changes and new burdens and presumptions in the Water Code wrought by SB 8, our clients are concerned that they may suffer prejudice should the Board's records erroneously suggest that their reporting of their diversions and use dates only after the passage of SB 8.

In addition, and without waiving any of the above, please confirm that the format of the statements and their contents already in the Board's possession is sufficient for any future filings under SB 8, whether for diversions from the Colorado River or otherwise.

Very truly yours,



Thomas S. Virsik
Enclosure

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THOMAS S. VIRSIK

June 16, 2010

Victoria A. Whitney, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: Statements of Water Diversion
Colorado River – Imperial County

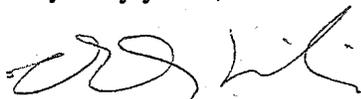
Dear Ms. Whitney:

Enclosed is a copy of our April 22, 2010 letter (without enclosures). To date, we have received neither a response nor any indication that the statements of water diversion were filed ahead of the July 1, 2010 deadline. We again demand that the SWRCB file our clients' statements.

Additionally, our clients intended to file amendments to their statements once received and numbered by the SWRCB. Since the SWRCB has delayed for over four years, our clients do not have the filing information (e.g., a numbered copy of their statement) on which they can tender individual amendments. Thus, our clients have no option but to tender the following universal amendment to Footnote 1 for all statements reflected in the April 22, 2010 letter:

Corporations Code § 14452 (formerly Civil Code § 552). Whenever any corporation, organized under the laws of this state, furnishes water to irrigate lands that the corporation has sold, the right to the flow and use of that water is and shall remain a perpetual easement to the land so sold, at any rates and terms that may be established by the corporation in pursuance of law. Whenever any person who is cultivating land on the line and within the flow of any ditch owned by the corporation, has been furnished water by it with which to irrigate his or her land, that person shall be entitled to the continued use of that water, upon the same terms as those who have purchased their land from the corporation.

Very truly yours,



Thomas S. Virsik
Enclosure April 22, 2010 letter

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THOMAS S. VIRSIK

July 21, 2011

Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comments for SWRCB 7/21/2011 Water Diversion Measurement Workshop --
Tina Shields (IID) letter 7/1/2011

Dear Mr. Hoppin:

I am with the office of Patrick J. Maloney in Alameda. Our office has been a strong advocate for the accurate reporting of water use data for decades. See April 2, 2002 Patrick Maloney letter to Paul Murphey. Our experience in the Salinas Valley, for example, was that the initial modeling conclusions about the cause and rate of seawater intrusion were inaccurate. Only with better data was the real problem understood and at least a partial solution implemented. This Board had a substantial role in those events in the late 1990's.

We represent clients in the Imperial Valley that own lands and whose water rights predate the creation of IID. These are at least the pre-1914 rights recognized by the US Supreme Court. Arizona v. California, (2006) 547 U.S. 150, 175.

Beginning in 2006, these clients filed over 350 statements of water diversion and they continued to update the statements through at least 2009. There was extensive correspondence between SWRCB staff and our office. As far as we can tell, SWRCB has never actually filed the statements of water diversion, even after the 2009 amendments that made more explicit the filing requirements.

This office previously prepared, and the SWRCB accepted for filing, the same sort of statements of water diversion from individual water diverters in Monterey County, on the Salinas River. Yet, with the Colorado River the statements have not yet been officially entered into the eWRIMS database. The SWRCB would have been far ahead with respect to Imperial Irrigation District's (IID) reporting had its staff filed the statements years ago when they were received.

Our clients are aware of the July 1, 2011, letter from IID's Assistant Water Department Manager, Tina Shield, to the SWRCB. They agree with some of it, but take issue with other

statements. Our clients are not surprised that IID admits in at least two places that the present measurement system is inaccurate. (Shields July 1, 2011 letter – 2nd ¶, 2nd to last sentence; 3rd ¶ 3rd and 4th sentences.) IID is admitting in those statements that what it has been reporting for decades has never been accurate. IID calls it a “magnitude of error.” Yet, in its conclusion IID asks that it be exempted from improving its measurements and reporting.

Since at least 2003, our clients have been trying to engage IID in broad improvements to its measurement systems. The clients have provided to IID modest cost proposals on how to make those improvements by working with the on-the-ground water users. One such proposal is for what our clients call the “Water Exchange” – a water management, conservation, measurement tool for which they received a patent. Our clients’ website explains a little about its use. www.imperialgroup.info. As Secretary Ross pointed out yesterday at the agricultural efficiency workshop, there are always innovators; it is getting the rest to follow that can be problematic. In this instance, the party declining to follow is one over whom this Board has authority – an irrigation district.

From our clients’ perspective, IID has available to it a ready means to materially improve its water management by cooperating with its water users – one of the so-called “unique circumstances” which this Board should consider. Or, does the Board wish to set a policy allowing or even encouraging diverters to ignore better technologies and practices that are fiscally reasonable just because the diverter is fearful of what such analysis and improvement may reveal?

IID claims in its last paragraph that the reporting by the United States Bureau of Reclamation (USBOR) is adequate, notwithstanding how IID characterized the measurement quality and its effects in the two prior paragraphs. What IID failed to mention is that during that time – in 2002 to 2003 – that the BOR performed a detailed analysis of IID’s water use (what is sometimes known as a Part 417 analysis). The BOR’s primary recommendation to IID was that IID “develop, maintain and use a district-wide network of water measurement devices for consistent monitoring, recording and reporting of system and on-farm water data.” BOR Determinations and Recommendations, August 29, 2003. So, contrary to what IID is suggesting, the BOR already is an advocate for better measurement and reporting by IID. Moreover, as Chairman Hoppin articulated at yesterday’s workshop, when there are competing systems of reporting, the goal is to harmonize, not ignore the potential differences.

IID’s diversions account for a substantial amount of the total California water diversions. IID’s letter conveniently omits this relevant piece of information. A 10% error of IID’s diversions -- 300K -- represents the entirety of the water transfer to the Coast (QSA) that IID mentions in its second paragraph. Imagine the affect of that amount of water – for better or worse – on the state of the Salton Sea. (The Board may wish to recall how Prof. Burt at yesterday’s workshop characterized the importance to the State of the potential improvements for IID.) As this Board and everyone else is likely aware, the QSA transfer is presently on appeal because the parties had utterly mishandled the Salton Sea. Had IID been forced to collect and make publically available more and better data, the transfer and the role of the Salton Sea in it would have been far different. Using the terminology advocated by Prof. Gleick at yesterday’s workshop, the co-

benefits of a transfer based on good data versus poor or missing data could have been starkly disparate.

The potential benefit to the State in forcing one of its largest diverters to sit down and work cooperatively with the on-the-ground water users to improve the measurement and delivery of water is too important to degenerate into political favoritism. Our clients who have over 350 pending statements of water diversion for the Colorado River as it passes through the IID service area strongly advocate that IID join the balance of the water diverters in improving its measurements and management as the law now requires.

There may be political reasons why IID wishes to maintain its inaccurate data reporting, but the absence of accurate data will only further aggravate the State's water problems.

Very truly yours,

Thomas S. Virsik

Thomas S. Virsik

Encl. Patrick Maloney April 2, 2002 letter to Paul Murphey, SWRCB

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JOHN F. HANSON, JR.
OF COUNSEL

April 2, 2002

Paul Murphey
Division of Water Rights
SWRCB
Sacramento, California

Re: Workshop on Professor Sax's Report
SWRCB No. 0-076-300-0
April 10, 2002

Dear Mr. Murphey:

Professor Sax's Report is a significant document. The SWRCB should pay particular attention to Chapters V and VI. The solutions Professor Sax proposes in these two Chapters are important to water issues in the state and are particularly important to California's economy over the next fifty years. Our comments on the Report are divided into the following categories:

- A. Background
- B. Responses to the Questions Posed by the Board
- C. People v. Forni
- D. Indefinite Nature of California Water Rights
- E. Existing Statutory structure

Background

Over the last thirty years lawyers in our Office have been involved in a number of different water issues in the State of California:

Re: Professor Sax report
4/02/02

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1>Developed the arguments and positions at the SWRCB on behalf of private clients which ultimately became People v. Forni.

2>Represented major landowners throughout California and Nevada.

3>Represented major financial institutions with concerns about their investments in California because of the water issue.

4>Co-Authored an article entitled "Restructuring America's Water Systems" published by the Reason Foundation. Neal, Kathy, Patrick J. Maloney, Jonas A. Marson and Tamer E. Francis, Restructuring America's Water Industry: Comparing Investor-Owned and Government-Owned Water Systems, Jan. 1996 (Reason Foundation, Policy Study No. 200). Many people see this article as an argument for privatization of the water delivery system in America. Morgan, Steven P. and Jeffrey I. Chapman, Issues Surrounding the Privatization of Public Water Service, Sept. 1996 (ACWA). The word "privatization" does not appear in the article. The article has received extensive criticism from organizations like ACWA, but the Reason Foundation article suggests public policy makers should rethink how water is distributed and managed in America and California in particular. The article has been purchased and studied by most significant water interests in the world including but not limited to financial institutions, water purveyors, engineering firms, and think tanks.

5>Developed the Instadjudicator. This is an interactive database that instantly determines a landowner's water rights or water entitlement in the Salinas Valley. The interactive database uses public source inputs such as chains of title, the APN system, assessor map overlays, County and State publicly available databases, defined engineering terms, the results of computer runs from the Salinas Valley Integrated Ground and Surface Water Model and other non-proprietary information. The utility of such a tool is to (1) quickly develop "what if" scenarios, and (2) to identify anomalous or skewed inputs or uses, e.g., identify by inferring from multiple sources that water use in a section of the analyzed area is substantially higher than the surrounding areas viz. unreasonable. We are not suggesting that the Instadjudicator is the only solution to the State's water issues but what is needed is a similar tool for all over-drafted (and ultimately all) basins so there can be a critical analysis of a Basin's water issues and "what if" scenarios can be quickly understood.

Engineers involved in the Mojave case have reviewed the operation of the Instadjudicator and suggested its use would hasten the resolution of the Mojave case. The Instadjudicator was offered to the SWRCB with appropriate technical assistance for its use but the offer was rejected. At a contested hearing the

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SWRCB refused to force the Monterey County Water Resources Agency to release data by which the instant adjudication of the Salinas Valley could be accomplished. Hearing on Motion to Quash Subpoenas, 6/28/00, Application 30532. A staff member of the SWRCB has suggested there are two problems with the Instadjudicator: A) The name and B) that this office developed it.

6>The office is currently working on an analysis of the leadership in the Water and Sewer industry with prominent People of Color. The purpose of this analysis is to compare the existing leadership of the water industry against the demographic make-up of the State now and forty years from now. The preliminary results of this research indicate that the California's water industry is not reflective of the ethnic demographic make-up of the State now or forty years from now.

Responses to the Questions Posed by the Board

Professor Sax proposes quantifiable criteria by which the water user could determine whether or not it is pumping percolating groundwater. The first problem with the proposed criteria is that they will involve more engineers arguing arcane hydrologic issues. These arcane hydrological issues are irrelevant if there is an unreasonable use of water. More importantly the percolating groundwater and underground surface water classification will change depending on what crop is used and how much water is being pumped in a given basin. What these criteria do is add further confusion rather than bring more definability to water usage in California. From time to time or place to place making the fine distinctions advanced by Professor Sax may be necessary, but only as a component of an overall solution-oriented water management system, not as the starting point. Making the management of California water more complex is not in the State's interest.

People v. Forni

Over thirty years ago adjudication was proposed for the Napa Valley and our vineyard clients decided adjudication would not solve the water problems caused by Frost Protection in the Napa Valley. The clients and their representatives instead worked closely with the staff of the SWRCB led by Ken Woodward, the former Chief of the Division of Water Rights, and the SWRCB to develop the principles which ultimately became People v. Forni. These principles and facts were presented in a highly contested hearing before the SWRCB. The arguments and the facts presented by our clients were the basis for the See decision and from

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4/02/02

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the See decision the SWRCB developed the regulation challenged in People v. Forni. People ex rel. SWRCB v. Forni (1976) 54 Cal.App.3rd 743; See Decision 1404. Our clients presented these positions because they felt the only way a system for Frost Protection could be developed was if all water sources in the water basin were considered and managed. Under the far-sighted leadership of Chairman Adams and Members Robie and Auer the SWRCB used its Sections 100 and 275 powers and brought stability to the region's water problems and allowed the Napa Valley to prosper. The lesson the SWRCB can learn from Forni is that once it develops a carefully reasoned engineering position it should take an active role in solving a region's water problem before the problem becomes a crisis.

For the last five years another set of clients have advocated a similar solution, the application of Sections 100 and 275 powers to the Salinas Valley's salt water intrusion and nitrate problems and the SWRCB has repeatedly rejected our clients' pleas. The current Chief of the Division of Water Rights has opposed the use of Sections 100 and 275 powers by the SWRCB because "initiating an unreasonable use proceeding would be viewed by the local agency as a 'blind-side' attack, and would probably be considered a back-door adjudication by the agricultural community. Nevertheless, if other efforts fail, this type of action would be preferred over an adjudication because the SWRCB could address administratively rather than in a judicial proceeding in superior court." (Confidential) Memorandum from Harry Schueller on Salinas Valley, June 16, 2000, page 8. The SWRCB's inaction has put in jeopardy the water supply of a major city in California and will likely cost the taxpayers (State and/or local) tens or hundreds of millions of dollars that could have been avoided by forcing a certain limited segment of the agricultural community to use water reasonably in the first place. The SWRCB has the power to solve water problems in this State and most of the issues raised in Professor Sax's Report. It must use the power and not worry about offending local water agencies or limited segments of the agricultural community.

Indefinite Nature of California Water Rights

No one really knows who has water rights in California. All water licenses are subject to vested rights. What those vested rights are is anybody's guess. Probably the most interesting statement made in Professor Sax's Report is found in footnote 122 wherein he cites In re Waters of Long Valley for the proposition that there is no such thing as unexercised riparian water rights in California. Long Valley probably does not say that, but the point is there is no water right in

Re: Professor Sax report
4/02/02

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California if the actual or contemplated water use is unreasonable. The Sax Report is full of references to cases by various California courts over the last century, which apply the reasonableness test to solve a water problem. There are no absolute water rights. A water right disappears in California when the needs of the community demand it.

The most disturbing problem we have in California water issues is that the SWRCB cannot figure out what its position is on most issues and the underflow issue is just a manifestation of the problem. We have staff letters of the SWRCB and Licenses telling the public that certain water rights exist yet frequently in public hearings of all types we have representatives of the SWRCB or other agencies of the State denying the validity of SWRCB's earlier positions. The SWRCB looks like a fool. To the outside world the State of California looks like a fool. In earlier times California could do whatever it pleased. Now, however, we have few major banks or financial institutions left in California and in order to maintain financing for our homes, agriculture and industries we must bring some order and discipline to the State's water system. We have to have more definability in our water system. We cannot reject definability merely because it upsets the sensitivities of certain water agencies or members of the agricultural community. The magic of People v. Forni and other things done in the Napa Valley to define water rights and optimize the region's water resources brought confidence to the investing and lending institutions and helped spur the development of California's wine industry.

Existing Statutory Structure and Actions of the SWRCB

Professor Sax's Report fails to recognize how much the Legislature and the SWRCB has actually done to solve the State's water problem. We direct the SWRCB's attention to Water Code Sections 5100 et seq. and 1010 et seq. and the forms prepared by the SWRCB. STATEMENT (1-00) and ST-SUPPL (2-01). No one knows exactly how to fill out the forms because of the SWRCB's inability to define underflow and consumptive use but at least there is a form. SWRCB has expanded the Section 5100 form dramatically in recent years without legislative approval. The forms should be expanded administratively to require water users to report all types of water sources and use. If the SWRCB does this administratively, there will be no need for the legislative action feared by Professor Sax. Once the forms are filed the data should be put into the existing publicly accessible SWRCB databases defined by USGS basin lines. Then Computer tools

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Page 6

should be developed for each water basin such as an "integrated groundwater and surface water model" throughout the State by which anyone could easily ascertain a reasonable use of water for a given basin.

Such a system would encourage conservation and the orderly transfer of water. Either the SWRCB or somebody else could then stop anybody who is unreasonably using water pursuant to Water Code Sections 100 and 275. Anybody who is using less than a reasonable amount water could transfer water to somebody who has a need for the conserved water. Then the State's water argument will be over reasonable use of water in any given basin not over the application of unclear laws to disputed hydrological facts.

Ultimately if the expanded Section 5100 form is not filled out and filed by a water user, the Legislature could develop legislation establishing a presumption the water user forfeits whatever water rights it has unless the water user can demonstrate good cause for not filing the form. Notwithstanding much of the uncertainty about the present filing system, this office has been active in filing reports for its various clients, relying on various public sources to explain and detail positions where the SWRCB has not provided clarity. This office understands the system to be akin to recording ownership of real property. In other words, if a water user declines to follow the statute and does not file, its claim will be entitled to less weight than any competing claim of a water user who followed procedures and filed reports – similar to that of a property owner who takes title but does not record it. Water users also file Statements with the expectation that this State database will be used by EIR preparers to catalogue and analyze water rights for a given project. Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 122; Petition for Extension of Time for Permit 5882 (Application 10216) (1999).

California's computer industry deals with much more complex than the State's water issues. The SWRCB should rely on this industry for solutions. The SWRCB's existing data system on water rights should be modified to make all pumping data publicly available and a system of inquiry developed so the public can ascertain a reasonable water use standard for each basin.

Conclusion

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4/02/02

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The Sax Report offers important statutory history. The SWRCB should carefully consider the Report's generalized recommendations and develop an action plan to pursue the goal of a more defined system of water rights. This will ultimately lead to an overall solution-oriented water management system.

Very truly yours,

Patrick J. Maloney

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THOMAS S. VIRSIK

September 22, 2011

Barbara Evoy, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: Statements of Water Diversion
Colorado River – Imperial County

Dear Ms. Evoy:

Since 2006, our office has had pending before the SWRCB staff over 350 statements of water diversion for waters from the Colorado River by clients in the Imperial Valley. As the enclosed copies of letters (by no means representative of all of the communication) demonstrate, staff has refused for some five years to file the statements. Most recently, staff's five-year delay was brought to the attention of the Board during the Water Diversion Measurement Workshop this year. Staff's decision to preclude the filing of the subject statements is now threatening to derail the imminent petition by Imperial Irrigation District (IID) to the Board addressing the same waters in the same basin, of which IID resolution the SWRCB is aware. See IID Resolution 27-2011 and the media article referencing the SWRCB spokesperson.

Our clients are in no way through this letter suggesting agreement, objection, protest or other position with IID's as yet unfiled petition. Nor are they taking a position in favor or against IID's proposal to transfer allegedly surplus waters and the environmental effects and alternatives to the project goal of creating funds for Salton Sea restoration or mitigation. However, the petition and IID's proposal will necessarily involve the waters of the Colorado River that are diverted for use in the Imperial Valley, to which the pending statements of diversion are facially germane.

This office is aware, through other clients in other water basins, that SWRCB staff has been diligent in perusing statements of water diversion. When staff believes such statements are to be filed but have not been (or supplements are missing), staff follows through with at times threats of penalties and fines. Thus, staff is obviously in possession of adequate tools and resources as well as Board direction in seemingly every other basin and with respect to all other diverters to follow the law. Nor does it appear that mere "controversy" dissuades the Board from taking action, as the recent Russian River regulation (September 20, 2011) makes abundantly plain.

Because of the imminence of the IID petition, the delay (intentional or otherwise) by staff looks to prejudice not only our clients, but also the IID, its water transfer "partners" on the Coast whose IID agreements are inextricably tied to the Salton Sea, and hence the millions of residents that are affected thereby, as well as the overall water policy of the State. Our clients demand that the backlog be resolved forthwith, and in all events their statements of water diversion be filed as of the date of presentation (with the amendments requested by staff as well as their own) before the acceptance of any IID petition addressing the waters of the Colorado River.

Very truly yours,



Thomas S. Virsik

c.

Charles R. Hoppin, Chair
Tam M. Dudoc, Board Member
Frances Spivy-Weber, Vice Chair
Kevin Kelley, GM IID

Enclosures:

May 12, 2006 letter (IID) (w/o encl.)
May 16, 2006 letter
August 30, 2006 letter (w/o encl.)
April 22, 2010 letter
June 16, 2010 letter
July 21, 2011 letter to Chair Hoppin (w/encl.)
"IID Seeks to Cut Off Salton Sea," Desert Sun, September 22, 2011
IID Resolution 27-2011

Chapter 8
Interest Groups Comments

Dale K. Hoffman-Floerke, Chief
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irrigation water. The information in Appendix I also indicates that a perimeter canal for irrigation to control air quality would be constructed if necessary in a manner similar to those suggested in other alternatives. See "March 28, 2006 Response from the Imperial Group" 1.d; e-mail from Ali Shahroody on December 11, 2006 to Charles F. Keene.

This information should be incorporated into the DPEIR to correct the omission and make clear that the Concentric Lakes Plan provides for long-term air quality management measures that meets or exceeds the requirements of CEQA and the Fish and Game Code for programmatic review. This should also be reflected in the attribute matrix that evaluates all the alternatives.

The Imperial Group appreciates the State's willingness to listen independently to the agricultural interests of Imperial Valley. However, the Consortium continues to be concerned that, in connection with the preparation of the DPEIR, the State did not make a greater effort to hire consultants reflective of the diversity of the Imperial Valley community, which will be most impact by Salton Sea Restoration. The Consortium has made a significant effort in its hiring of its Advisors and developing its proposal and the Consortium believes it is in conformity with the spirit of the State of California on this issue as set forth in Public Utilities Code section 8283. The Consortium in its ultimate construction of this project plans to follow the spirit of Public Utilities Code section 8283. The State's behavior to date, however, does not.

In sum, and as recognized by environmental groups and as reflected in the many of the statements in the DPEIR itself, the Concentric Lakes Plan is by far the leading alternative in meeting the goals set out in CEQA, Fish and Game Code Sections 2931(c) and 2081.7(e)(2)(A). In addition to being the most cost effective alternative, it provides the most beneficial shoreline and aquatic habitat of any option considered, offers significant water quality improvements, and contemplates appropriate mitigation measures to significantly reduce long-term air quality impacts. Based upon its advantages in the statutorily mandated selection criteria the Concentric Lakes Plan should be chosen as the Preferred Alternative.

For the Consortium,

Patrick J. Maloney

Enclosures

- Exhibit A – May 26, 2006 Response to DWR
- Exhibit B - Partial Summary of Consortium Comments & Activities
- Exhibit C – Stetson Engineering Analysis
- Exhibit D – Dr. Reinelt Analysis
- Exhibit E – Water Rights/Supply & QSA Litigation Analysis

IG (cont.)

IG-14

See response to comment IG-3.

IG-15

See response to comment IG-3.

IG-16

The Resources Agency complied with the State contracting requirements. The referenced section of the Public Utilities Code does not appear to apply to this study.

IG-17

See response to comment IG-1.

IG-14

IG-15

IG-16

IG-17