CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.

Central Office
631 Central Office
631 Howard St., #300
San Francisco, CA 94105
Telephone 415.777.2752
Fax 415.543.2752
www,crla.org

José R. Padilla
Executive Director

Luis C. Jaramillo
Deputy Director

Ralph Santiago Abascal
General Counsel
(1934-1997)

Jack Daniel
William G. Hoerger
Ilene Jacobs
Cynthia Rice
Directors of Litigation, Advocacy, and Training

Regional Offices

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LSC

November 14, 2001

Tom Peltier
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Re: The State Water Resources Control Board's November 14, 2001 Public Workshop

Dear Mr. Peltier:

California Rural Legal Assistance, Inc. (hereafter, "CRLA") is a not-for-profit California corporation founded in 1966 that employs attorneys and community advocates who provide legal services and representation to income-eligible persons. We have 20 offices ranging from Marysville in the north to the Mexican border. Our offices within the region encompassed by the Plan include El Centro (Imperial County), Coachella (Riverside County), and Oceanside (San Diego County).

CRLA submits the following comments regarding the Colorado River Water Use Plan (draft, June 2, 2000--hereafter, "the Plan") and related California water supply issues on behalf of clients who reside in the geographic area covered by the Plan. These clients, and thousands of low-income workers and residents will be affected by the Plan's provisions to transition California to its basic Colorado River water apportionment.

We are cognizant of California's obligation to reduce its use of Colorado River water. We are concerned, however, that the Plan relies too heavily on projected "core voluntary cooperative conservation/transfers from agricultural use to urban water use," "cooperative water reduction/transfer program (e.g., cooperative land fallowing/water transfers), and/or "water purchases." (Plan, at p. 3). We also are concerned that the Plan fails to address related issues of great significance to our clients and the surrounding communities which we describe below.

I

Before discussing substantive aspects of the Plan, we wish to bring to your attention a procedural concern.

It appears that all materials and forums discussing the Plan are, and have been, only in English. Our clients and a substantial number of the other people affected by the Plan are mono-lingual, non-English (generally, Spanish) speaking. The State Water Resources Control Board (hereafter, "SWRCB"), as well as many other entities that will make decisions (including but not limited

to water transfers) critical to the region's future economic and social viability, are state agencies as defined in the Dymally-Alatorre Bilingual Services Act. (Cal. Govt. Code §§ 7290 *et seq.)* The Dymally-Alatorre Act requires that:

> [e]very state agency...directly involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person. (Govt. Code, *supra*, §7292.)

Additionally,

> [a]ny materials explaining services available shall be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it shall be given in English and in the non-English language into which any materials have been translated. (*Id.*, §7295.)

The Act further defines a "substantial number of the public served by the agency" as "5 percent or more of the people served by any local office or facility of a state agency". (*Id.*, §7296.2.) More than 5 percent of the population residing in the region covered by the Plan speak a language other than English. For example, the last available census figures (1990) for Riverside, Imperial and San Bernardino Counties show that over 20 percent of the total population spoke primarily Spanish.[1] (Over 60 percent of Imperial County's population speak Spanish.) The duty to translate or provide alternative effective methods of communication is triggered whenever an agency distributes material requesting information **or** when the material affects substantial rights of the addressees. (§ 7295.4.) The SWRCB's Notice of Public Workshop invites members of the public to submit "information on the status of [the Plan] and the various water conservation measures and management techniques that are an integral part of the plan." It is clear that

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[1]The 2000 census figures for home language have not yet been released. The current non-English speaking population in these counties is undoubtedly higher then the 1990 census figures. One proxy for home language, the home-language census for school districts, shows that in School Year 1999-2000 (the most recent available figures) there were 713,955 students in those three counties of whom 208,610 or 29.2 percent were identified as either "English Learners" or students who had been "English Learners" and had not been redesignated as "Fluently English Proficient". Both these categories live in homes where the home language is other than English. Over 94.2 percent, or 196,510, of these students lived in Spanish-speaking homes. Thus, the student figures indicate that for families with school students in the three counties, 27.5 percent have Spanish as their home language.

SWRCB is required to comply with the Act, and we urge you to immediately engage the region's non-English speaking populations in discussion of what all agree are policy matters of vital importance to the future economic, social, environmental and cultural viability of communities in the region.

II

Our farmworker and rural-community clients in the region have serious concerns regarding the potential loss of agricultural production and corresponding employment, given the Plan's heavy reliance on, and goal of facilitating, water transfers from agricultural to urban water users. Actions by the Colorado River Board of California with respect to agricultural entitlements are equally designed to this end. Indeed, the Plan's underlying policy principles, e.g., "achiev[ing] quantification of the agricultural agencies' entitlements . . . to facilitate voluntary water transfers," "foster[ing] development of administrative procedures by each agency to effectively administer and apportion water within its service area in conjunction with voluntary water transfers," and "facilitat[ing] voluntary willing seller/willing buyer transfers of Colorado River water, along with necessary transportation agreements," make long-term core water transfers from agriculture to urban use the fundamental "linchpin". (*Id.*, pp. 28-29, 32.).

"With respect to [these] long-term transfers, preference is given to cooperative voluntary water conservation/transfers inasmuch as they generally have lesser third party impacts to regional and local economies and the environment, and help optimize existing resources." (*Id.*, at 32-33.) This statement is remarkable for what is not stated: the assumption that the transferor is synonymous with the "regional and local econom[y] and the environment", i.e., that the transferor's interests are the interests of the regional and/or local economy and environment. The extent of this identity of interests is obviously affected by the policy framework within which the voluntary transfers occur and implicates fundamental questions of public benefit from transfer of publicly-underwritten resources. Current procedures and efforts at mitigation in the Palo Verde Irrigation District will shed additional light.

The Plan claims, without substantiating evidence, that "Cooperative water conservation/transfers can result in significant benefits including:

- a permanent water savings and long-term, reliable water supply,
- increased water use and conveyance efficiencies, and
- investment in infrastructure improvements that provide for improved water operations, increased operational flexibility, and best management water use practices." (*Id.* at 33.)

The Plan identifies the Imperial Valley as the principal area for cooperative water conservation program opportunities. (*Id.*) The Plan anticipates a total of 538,700 acre-feet of "core

cooperative voluntary water conservation/transfer projects and associated exchanges from the Imperial Irrigation District, Coachella Valley Water District, Coachella Canal Lining, and the All American Canal Lining. (*Id.*, at 33-34.) The Imperial Irrigation District has entered into what many call a landmark agreement with the San Diego County Water Authority to transfer up to 200,000 acre-feet of agricultural water, annually. The initial term of the agreement is for 45 years, with a provision that either agency may extend the agreement for an additional 30-year term. Although agricultural land fallowing is not expected to be utilized to conserve water, the details of how the impacts and benefits of this transfer will be distributed have yet to be worked out. (*Id.* at 36.)

Prior transfers of agricultural water to urban agencies--including the 1992 to 1994 Test Land Fallowing Program between the Palo Verde Irrigation District and the Metropolitan Water District--have substantially impacted both the buying and selling communities. (See, *e.g.*, *The Palo Verde Test Land Fallowing Program: A Model of Future California Water Transfers?*, Penn Loh and Anna Steding, (Pacific Institute for Studies in Development, Environment and Security, March 1996).) While not able to conclusively quantify these impacts, Loh and Stending estimated that the transfer's may have impacted agricultural labor in the region as much as 14 percent. (*Palo Verde Test Land Fallowing, id.*, at 14.) In general, water transfers that result in either the fallowing of labor-intensive crops or in fewer acres of labor-intensive crops a directly reduce agricultural employment.

THE DESERT SUN recently reported that an economic impact report released by the U.S. Bureau of Reclamation shows that taking 75,000 acres of land out of farm production would put 2,000 people out of work and cut Imperial County's economy by $120 million. ("Fallowing concept not growing on Salton Sea Region's farmers," Lukas Velush, *THE DESERT SUN*, October 29, 2001, Section B.) Subsequently, the *IMPERIAL VALLEY PRESS* published a story quoting the regional director of the Bureau of Reclamation Robert Johnson saying that "fallowing is a better option for everybody" and that he saw "good reasons why fallowing should be implemented." ("Water Transfers/Imperial-San Diego, Bureau: Fallowing is better option," Rudy Yniguez, *IMPERIAL VALLEY PRESS*, November 1, 2001.) The latter story goes on to state that the "community could pay each employee who lost his[/her] job $15,000." Our clients', and the community's concern, is that revenues generated from water transfers will not be reinvested in the community or to compensate the thousands of agricultural workers (on- and off-farm) who will lose their jobs.

Despite the Plan's heavy reliance on water transfers from agricultural to urban water users, the consideration of environmental factors section lacks substance and fails to comply with the requirements of the California Environmental Quality Act. (*Id.*, at 123 - 154.) With respect to agricultural resources, for example, the Plan anticipates that 538,700 acre-feet of agricultural water will be transferred, yet concludes without any proof that the impacts from "farmland conversion in the Imperial Valley" would be "less than considerable." (*Id.*, at 128.)

The Plan's discussion of environmental factors for land use/planning is similarly void of substance. While it recognizes that facilities or projects may result in cumulative impacts to specific areas where implemented, the Plan fails to provide any information regarding the magnitude of such impacts or identifying the regions likely to be adversely affected. There is no discussion as to how the full implementation of the Plan will affect the ability of the counties and cities, such as Riverside County, to implement their General Plans. (Govt. Code, §§ 65061 *et seq.*; §§ 65101 *et seq.*) There is no mention of the Plan's impact on these jurisdictions' abilities to build affordable housing and farmworker housing in compliance with statutorily-required housing elements of these General Plans. (Govt. Code, §§ 65302 subd. (c), 65580 *et seq.*) Water availability is essential to local land use decisions and to the development of infrastructure for affordable housing, key concerns to our client community. It is critical that the Plan publicly analyze its potential impacts on land use, housing, and other related elements of local General Plans including not only job-related concerns, but the jobs-housing balance in these communities, as well as impacts on future planning and housing development.

Beyond quantifying the goal for water transfers, the Plan apparently attempts to quantify little else; its projections seem the product of wishful thinking. Undoubtedly, projections are difficult, and they bear elements of uncertainty. These projections' abilities to withstand the uncertainty of implementation will be vastly improved if they are first tested against the uncertainties of full public exposure and debate, including exposure to and debate by the substantial portions of the region's population whose concerns are driven by their labor in low-wage employment and their modest housing--and who generally communicate in languages other than English.

Respectfully submitted,

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

11/14 Wrkshop on Colorado River
CPS: Bd Members/MM
CC/HMS
ECA/VAW/TP

TOM PELTIER
Division of Water Rights
State Water Resources Control Board
P O Box 2000
Sacramento, CA 95812-2000

Re: Colorado River Water Use Plan
Comments for Workshop, November 14, 2001 1:00 p.m.

[X] NO on the taxpayer fraud - Colorado River Water Use Plan*

[X] NO on the unlawful fraud - Colorado River Water Use Plan;

[X] NO on the Colorado River Water Use Plan;

[X] NO on water transfers to San Diego;

[X] YES on Imperial Irrigation District appropriative rights;

[X] YES on Arizona rights;
[X] YES on Nevada rights;

[X] YES on Fish, Wildlife, Migratory Birds and Environment Protection Acts and rights:

*Water transfers will unnecessarily cost taxpayers more than 2 billion dollars the first year alone. Why should taxpayers pay when without the transfers, there would be no damage to 'mitigate' or takings (killing) of wildlife? Imperial County and Imperial Irrigation District have vitally necessary consumptive and beneficial uses for the appropriative water it will continue to receive and conserve without the 'plan'.

There would be no damage to mitigate at great taxpayer expense, if the water transfer and this plan were to fail. Instead of funding water transfers, tax monies could be spent to develop cost effective desalinization methods and water conservation in the very wasteful and thirsty urban areas.

The Sea will survive better without the help of this plan to kill it. The supposed threatened death of the Sea is false propaganda circulated by the transferees. The truth is the Salton Sea will survive enough years until a desalinization method is developed or new water sources are discovered. Imperial County needs the water, taxpayers need the savings, and all Imperial County residents and wildlife need this habitat.

KILL THE COLORADA RIVER WATER USE PLAN INSTEAD!

Simone

SIMONE
3751 Capri Lane
Desert Shores, Thermal, CA 92274-8395
760 395-2313 Bar No. 87305