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December 5, 2011

Ms. Lorri Gray-Lee
Bureau of Reclamation
Lower Colorado Regional Office
Attn: BC00-4200
P.O. Box 61470
Boulder City, NV 89006-1470

Subject: *Corrected* IID Estimates of Diversion – Colorado River 2012
(Ref. BCOO-4226/WTR 4.03)

Dear Ms. Gray-Lee:

IID's September 15, 2011 estimate of diversion for calendar year 2012 contained a typographic error in the scheduled volume of water for the IID/CVWD transfer, and should have indicated a volume of 21,000 acre-feet, not 20,000 acre-feet. In addition, on November 21, 2011 oral arguments regarding the Quantification Settlement Agreement litigation were made to the appellate court. While IID is cautiously optimistic after the conclusion of this hearing, until such time that a decision is issued by the court the uncertainty associated with the QSA agreements and 2012 still exists. Corrections regarding this court hearing and the 1,000 acre-feet correction are the only changes to IID's initial estimate and are reflected below by italicized text.

This letter responds to the Bureau of Reclamation's request to the Imperial Irrigation District for an estimate of IID's 2012 expected water use. This estimate constitutes IID's water "order" for 2012. This letter utilizes the *Accounting Methodology for IID Canal Losses Key Terms of Agreement* dated October 3, 2007 between IID and Reclamation. Should there be any changes to this methodology, it may or may not require further revision to the 2012 water order.

This water order should be considered by Reclamation in the context of the signed Quantification Settlement Agreement (QSA) and the reservation of legal positions contained in the dismissal of IID v. USA, et al. As historically recognized by Reclamation and the position of many other Colorado River contractors, water orders submitted in advance of the water year are merely estimates of anticipated water use that may need adjustment based on a wide variety of variables that impact water use during the course of a year. No Colorado River contractor can predict exactly what it will need the following year; it can only make an educated guess. Thus, water orders may require subsequent revision and should not be perceived as a volume limitation on the annual exercise of the water right. Similarly, the exact volume and proposed uses of conserved water cannot be determined or accurately predicted in advance of any water

conservation program's startup and final contracting. The final calculation of actual conserved water yields are dependent on year-end crop water use, rainfall, and delivery records that are not available prior to the conclusion of the current calendar year. Contracting parameters and conserved water requirements for 2012 are also dependent on Reclamation's or third-party measurement, reporting, and calculation of IID's diversions, return flow credits, and consumptive uses for the current and previous water years. The accuracy and timeliness of these final measurement and Decree Accounting records are a significant factor in IID's estimates, such that they may require subsequent revision and should not be considered a volume limitation for purposes of IID's annual consumptive use or diversion calculation.

Also significantly, for purposes of the 2012 estimate, there is some degree of uncertainty surrounding the QSA and implementation of the various agreements, transfers and environmental mitigation programs related to the QSA. As you know, on February 11, 2010, the Superior Court for the County of Sacramento entered a judgment that invalidated the QSA, the related water transfer agreements between IID and SDCWA, CVWD, and MWD, and invalidated the QSA-JPA Agreement related to funding for QSA related environmental mitigation. IID and others appealed the judgment and obtained a stay of that judgment that will last for the duration of the appeal. Appellate briefing is complete, *oral arguments were heard on November 21, 2011*, and a decision is expected by *early* 2012. If the Judgment is reversed, trial will presumably resume in 2012 on matters not yet decided affecting validity and environmental review compliance. If the Judgment is affirmed, there may be requests for review by the California Supreme Court and for the granting of a stay during that period, but neither Supreme Court review nor a further stay is assured. IID also expects that the pending QSA-related litigation in the U.S. District Court in San Diego by the County of Imperial and its Air District against the U.S. and QSA signatories challenging the U.S. compliance with NEPA and the Clean Air Act prior to the Secretary's approval and execution of the CRWDA, and seeking to set aside that agreement, will also be completed in late 2011 or early 2012.

Thus, for IID water conservation programs and mitigation water creation programs that rely on contracts with farmers, which utilize a July 1 to June 30 contract year consistent with most farm plans and leases, 2012 again poses a significant contracting difficulty and risk to IID for pending and new contracts involving calendar years 2012 and beyond. Furthermore, the QSA related uncertainty caused by the litigation also directly affects the funding ability and assurances of the QSA JPA for reimbursements to IID for implementing the required mitigation activities. This 2012 estimate of IID consumptive use and conserved water transfers attempts to take these uncertainties and risks into account as well.

Thus, IID submits this water order without limiting IID's 2012 water rights. However, IID acknowledges that the QSA itself, assuming its continued viability, provides an annual volume limitation. Pursuant to that agreement, IID quantified its Priority 3 consumptive use at a maximum of 3.1 million acre-feet per year during the term of the QSA. IID anticipates (but does not limit itself except by the terms of the QSA) a consumptive use need of *2,757,300* to 2,902,300 acre-feet for 2012. This range of estimates is intended to address the consumptive use needs for IID in 2012 assuming a bookend of

circumstances ranging from the continued implementation of current QSA obligations (lower end of the range) as well as the increased local demands should the litigation prevent IID from implementing its water conservation and transfer programs (higher end of the range). Pursuant to the QSA, and assuming implementation of the QSA as agreed to by all other parties without material changes or failure, IID's estimated water order for 2012 is as follows:

IID 2012 Estimated Consumptive Use[1] Table in Acre-Feet (September 15, 2011 *corrected*)	
Priority 3 Cap	3,100,000
Miscellaneous PPR's	(0-11,500)
1988 IID/MWD Agreement[2]	(105,000)
IID/SDCWA Transfer	(0 -90,000)
Salton Sea Mitigation[3]	(0-22,500)
AAC Lining	(67,700)
IID/CVWD Transfer	(0-*21,000*)
Estimate of Additional Conserved Water[4,5,6,7]	(25,000)
Total IID 2012 Consumptive Use[1] Estimate Range[8]	***2,757,300*-2,902,300**

IID 2012 Estimated River Diversion Table in Acre-Feet	
Total IID 2012 Consumptive Use[1] Estimate Range[8]	*2,757,300*-2,902300
2012 Estimated Consumptive Use[1] met by LCWSP[9]	(7,200)
Total IID 2012 Consumptive Use[1] Estimate Range[8] at River[8]	***2,750,100*-2,895,100**

1 Consumptive uses include uses for agricultural, municipal, industrial, environmental, environmental mitigation and storage purposes.

2 In 2007 (by agreement between IID and MWD), the annual conservation yield of the 1988 IID/MWD Agreement was fixed at 105,000 AF. This value may decrease if certain Tailwater Return Systems are not continuously operated and the project's conservation yield is reduced.

3 In 2010 IID delivered 46,546 acre-feet of Colorado River water to the Salton Sea, without exceeding IID's 2010 consumptive use limit, to be stored and used to meet the mitigation delivery obligations for 2011 and the first half of 2012. This is consistent with the early delivery of mitigation water to the Salton Sea by IID in 2004 and 2005 done at the request of Reclamation. This early delivery of mitigation water is for the purpose of reducing the cost of environmental mitigation in light of the QSA litigation concerns affecting mitigation funding by the State of California, and in light of the uncertainty IID faces in contracting to create mitigation water because of the QSA litigation. As such, the 2012 Salton Sea mitigation obligation of 45,000 is reduced by half. A final true-up of the early delivery mitigation water to storage in the Salton Sea will likely require an adjustment to this volume.

4 Additional conserved water uses include Intentionally Created Surplus (ICS), inadvertent overrun payback (IOP), early IOP payback on behalf of another Colorado River contractor, groundwater storage, groundwater recharge, storage in the Salton Sea, delivery of ICS to meet water transfer obligations, and/or other allowed uses of conserved water. This estimate will be adjusted and specific uses defined more appropriately as the year progresses.

5 The truing up of all 2011 and 2012 fallowing and main canal seepage interception program yields after year-end may require an adjustment to this volume, as would approval of any requested II(B)(6) water to reduce IID's 2011 overrun obligation should it exist.

6 Final contracting of IID's 2012-2013 Fallowing Programs and a true-up of all 2011 IID fallowing and other conservation program yields at year-end will require an adjustment to this volume.

7 Pursuant to Section 3.B.9 of the Interim Guidelines for the Operation of Lake Powell and Lake Mead, IID's estimated volume of ICS water may decrease in 2012 with the appropriate notifications.

8 This range of estimates is intended to address the consumptive use needs for IID in 2012 assuming a bookend of circumstances ranging from the continued implementation of current QSA obligations (lower end of the range) as well as the increased local demands should the litigation prevent IID from implementing its water conservation and transfer programs (higher end of the range).

9 2012 order not yet received from LCWSP contractors. However, IID estimates that it will be requested to maximize this project's yield, which is estimated to be 7,200 acre-feet annually based on a daily production volume of nearly 20 acre-feet. Actual pumped volumes and projections should be updated by Reclamation throughout 2012.

This *2,757,300* to 2,895,100 acre feet of consumptive use at Imperial Dam (net of return flows) will require a larger volume diversion from the Colorado River in 2012. Any changes to the actual 2012 LCWSP pumping will, of necessity, result in changes to IID's actual Colorado River diversion and the associated return flow credit estimate, while the use of any in-lieu flows from the Warren H. Brock Reservoir in 2012 will require reductions to IID's actual Colorado River diversions and consumptive use accounting volumes at Imperial Dam. This annual water order estimate is based upon average conditions for rainfall, salinity and likely 2012 cropping patterns, including multiple cropped acreage and normal economic conditions in crop markets. Actual diversions in 2012 will, of necessity, reflect changed circumstances as they evolve including the final contracting of any 2012 fallowing programs, the truing up all IID fallowing and other conservation program yields at year-end, and the eventual developments in the QSA litigation.

Finally, please let this letter serve as a request by IID for any unused apportionment available to California in 2012 under Section II(B)(6) of the United States Supreme Court Decree, to be used for reducing any inadvertent Overrun of IID's in 2011. Reclamation has informed IID that requests for II(B)(6) water need to be made in the calendar year in which II(B)(6) water is available; however, IID believes that informing Reclamation as early as possible of its desire for II(B)(6) water can only be helpful to Reclamation's administration of the Colorado River. As such, IID provides this *early* notice of its request with the understanding that, similar to its inability to exactly predict now how much IID will consumptively use in 2012 because of the number of variables that can affect IID's consumptive use, Reclamation cannot accurately predict how much or whether there will be any II(B)(6) water available to satisfy IID's request. We appreciate Reclamation's willingness to keep IID informed about this, and IID will reiterate its request for II(B)(6) water in 2012 for Reclamation's convenience.

If you have any questions regarding these issues, please contact Ms. Tina Shields at 760-339-9038.

Sincerely,

Kevin E. Kelley
General Manager