



February 6, 2018

**BOARD AGENDA MEMORANDUM****Action**

**SUBJECT** Resolution Repealing the Equitable Distribution Plan  
**DEPARTMENT** Legal  
**PRESENTER** Kevin Kelley, general manager  
 Joanna Smith Hoff, deputy general counsel

**Background**

On October 28, 2013, the IID Board of Directors adopted Resolution No. 26-2013, thereby adopting a revised Equitable Distribution Plan and authorizing implementation of the EDP, including a hybrid method of apportionment that had a historical use component and a straight-line component. The lawsuit by Michael Abatti challenging the Equitable Distribution Plan adopted in October 2013 (*Michael Abatti, et al. v. Imperial Irrigation District* case No. ECU07980) was filed on November 27, 2013.

On August 15, 2017, Judge Brooks Anderholt issued a statement of decision in the case. A writ of mandate and a declaratory judgment were issued on August 25 and September 19, 2017, respectively. The writ of mandate, attached, directs IID to repeal the EDP. IID filed a notice of appeal on September 26, 2017. Mr. Abatti filed a notice of cross-appeal on October 16, 2017.

Mr. Abatti sought an order from the appellate court to mandate the trial court to enforce its writ of mandate and declaratory judgment while the appeal on the merits is pending. In contrast, IID sought appellate court confirmation that a stay is in place pending the appeal on the merits of the case to maintain the status quo of implementation of the EDP with the hybrid method of apportionment, which has been in place since its adoption in 2013. On January 31, 2018, the appellate court issued two orders, attached, denying both Abatti's and IID's writs. The net effect of the appellate court orders is that there is no stay and the court is not directed to pursue any enforcement of its writ of mandate and judgment.

Attached is a proposed resolution to repeal the EDP in its entirety by repealing Resolution No. 26-2013, which adopted the EDP.

In the absence of an EDP, all IID water users continue to be subject to the requirement of reasonable and beneficial use of water under the California Constitution, Article X, section 2. IID continues to be subject to the 3.1 million acre-foot annual consumptive use cap under the Quantification Settlement Agreement and the rules of the federal

*Inadvertent Overrun and Payback Policy*, which set forth the limitations under which IID may exceed its annual consumptive use cap, including payback requirements, and the circumstances under which IID cannot exceed its annual consumptive use cap.

**Financial Impact**

There is no financial impact for adoption of the proposed resolution. The long-term financial impacts of repealing the EDP are unknown at this time.

**Recommendation**

Staff requests adoption of the proposed resolution repealing the Equitable Distribution Plan.



**IMPERIAL IRRIGATION DISTRICT  
RESOLUTION NO. 4-2018**

**REPEALING RESOLUTION NO. 26-2013  
THAT ADOPTED THE EQUITABLE DISTRIBUTION PLAN**

**WHEREAS**, on October 28, 2013, the Imperial Irrigation District Board of Directors adopted Resolution No. 26-2013 adopting a revised Equitable Distribution Plan (“EDP”); and

**WHEREAS**, on October 28, 2013, the board authorized implementation of the EDP, including a hybrid method of apportionment using both a historical use and a straight-line component; and

**WHEREAS**, the EDP adopted by the board by Resolution No. 26-2013 provided benefits and opportunities to agricultural and non-agricultural water users to engage in conservation of water and ensure reasonable and beneficial use of water and the ability to predict available water supply and develop plans for use on an annual basis; and

**WHEREAS**, on November 27, 2013, the board’s adoption of Resolution No. 26-2013 and the content of the EDP were challenged by a lawsuit, *Michael Abatti, et al. v. Imperial Irrigation District*, case number ECU07980; and

**WHEREAS**, on August 25, 2017, a writ of mandate was issued by the trial court directing IID to repeal the EDP adopted by Resolution No. 26-2013; and

**WHEREAS**, on September 26, 2017, IID filed a notice of appeal and on October 16, 2017, Mr. Abatti filed a notice of cross-appeal; and

**WHEREAS**, on January 12, 2018, IID filed a writ of supersedeas with the appellate court seeking confirmation that the matter should be stayed pending the appeal on the merits of the case; and

**WHEREAS**, on January 31, 2018, the appellate court denied IID's request for a stay finding that a stay is not in place pending the appeal on the merits of the case; and

**WHEREAS**, the refusal to stay the trial court's writ of mandate and declaratory judgment will have no effect on the ultimate merits of the case when that matter is finally decided by the appellate court and IID and its attorneys have determined that the course of action available to IID is to repeal the EDP, pending a decision on the merits in the matter; and

**WHEREAS**, the stay having been denied and the writ of mandate issued by the trial court being in effect pending the appeal on the merits, IID intends to comply with the writ of mandate by repealing the EDP; and

**WHEREAS**, nothing in the writ of mandate or the declaratory judgment direct or require that IID distribute water or allow the use of water by any party that would be contrary to the principles of reasonable and beneficial use of that water or that would result in the waste of water.

**NOW, THEREFORE, BE IT RESOLVED**, that the IID Board of Directors hereby repeals Resolution No. 26-2013 in its entirety and thereby direct that:

1. The EDP is repealed in its entirety through this Resolution No. 4-2018 which formally repeals Resolution No. 26-2013.
2. Those currently receiving benefits and opportunities under the now repealed EDP will no longer receive those benefits and opportunities unless the trial court's decision invalidating the EDP is overturned or unless a new EDP is adopted by the board, whichever occurs first.

3. Notwithstanding the repeal of Resolution No. 26-2013, no system for the distribution of water and no use of water shall be allowed by this board that results in a use of water that is not reasonable and beneficial or that would result in waste as set forth in the California Constitution, Article X, section 2.

**PASSED AND ADOPTED** this 6th day of February, 2018.

**IMPERIAL IRRIGATION DISTRICT**

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President

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Secretary

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SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF IMPERIAL

MICHAEL ABATTI, TRUSTEE OF THE  
MICHAEL AND KERRI ABATTI FAMILY  
TRUST and MIKE ABATTI FARMS, LLC, a  
California limited liability company,

Plaintiffs and Petitioners,

vs.

IMPERIAL IRRIGATION DISTRICT and  
DOES 1-10,

Defendants and Respondents.

Case No. ECU07980

**[PROPOSED] PEREMPTORY WRIT OF  
MANDATE**

Judge: Hon. L. Brooks Anderholt  
Dept: 9

Case Filed: November 27, 2013

To Defendant and Respondent the Imperial Irrigation District:

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[PROPOSED] PEREMPTORY WRIT OF MANDATE

Mailed  
Sent Original on 8/21/17  
to Pif. Atty

BY FAX

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The petition for peremptory writ of mandate on file in this proceeding having been considered, and this court having ordered that a peremptory writ of mandate issue, WE DO COMMAND YOU forthwith upon receipt of this writ to repeal your Equitable Distribution Plan adopted on October 28, 2013 in Resolution in Imperial Irrigation District Resolution No. 26-2013.

Witness the Honorable L. Brooks Anderholt, Judge of the Superior Court.

Attest my hand and the seal of this Court this 31 day of August 2017.



Interim Maria Rhinehart  
Clerk

By: N. Torres  
Deputy Clerk **N. TORRES**

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
**01/31/2018**  
Kevin J. Lane, Clerk  
By: Alissa Galvez

MICHAEL ABATTI, as Trustee, etc., et  
al.,

Plaintiffs, Respondents and  
Appellants,

v.

IMPERIAL IRRIGATION DISTRICT,

Defendant, Appellant and  
Respondent.

D072850

(Imperial County  
Super. Ct. No. ECU07980)

THE COURT:

Imperial Irrigation District's petition for writ of supersedeas and request for stay have been read and considered by Justices Benke, Nares and Haller. Because the writ of mandate and declaratory judgment constitute a prohibitory injunction, precluding the petitioner from continued enforcement of the October 2013 Equal Distribution Plan, the petitioner's request for writ of supersedeas to confirm an automatic stay is denied. (See *People v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, 342.) Petitioner's request for a discretionary writ of supersedeas staying enforcement of the writ of mandate and declaratory judgment is also denied. Petitioner has failed to show the balance of hardships supports its requested stay.

NARES, Acting P. J.

Copies to: All parties



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
**01/31/18**  
Kevin J. Lane, Clerk  
By: Jonathan Newton

MICHAEL ABATTI, as Trustee, etc., et  
al.,

Petitioners,

v.

THE SUPERIOR COURT OF IMPERIAL  
COUNTY,

Respondent;

IMPERIAL IRRIGATION DISTRICT,

Real Party in Interest.

D073331

(San Diego County  
Super. Ct. No. ECU07980)

THE COURT:

Michael Abatti's petition for writ of mandate has been read and considered by Justices Benke, Nares and Haller. The petition is denied.

NARES, Acting P. J.

Copies to: All parties

