

# WHY IS IID APPEALING THE JUDGE'S DECISION IN THE ABATTI LITIGATION?



## BACKGROUND

Imperial Irrigation District currently holds rights to 3.1 million acre-feet per year of Colorado River water supplies. IID's senior priority water rights comprise over 70 percent of California's Colorado River entitlement. For more than 100 years, IID and its water users have managed this precious natural resource to the benefit of our community and the nation it helps to feed, serving both agricultural and domestic water users.

Since its formation, the district has held these water rights in trust for the benefit of all water users, with over 97 percent of its supplies delivered for agricultural use and the balance for municipal, commercial and industrial use.

Law of the River changes, including the Quantification Settlement Agreement and the U.S. Department of Interior approved Inadvertent Overrun and Payback Policy, created a need for a workable water management plan. Understanding it needed a plan that would simultaneously conserve water and meet the needs of all its users, IID began in 2004 evaluating different methods for equitably distributing water within its service territory.

After intensive fact-finding, publicly held workshops and exhaustive deliberations, the IID Board of Directors adopted an Equitable Distribution Plan in 2007.

The EDP serves three primary purposes:

- 1) Satisfies IID's responsibility to equitably distribute water to all water users.
- 2) Provides a water budget for customer planning to prevent overruns, facilitate water conservation and reduce potential waste allegations.
- 3) Allows IID to meet Quantification Settlement Agreement milestones within California and on the Colorado River.

## A SUIT AGAINST THE DISTRICT

A lawsuit challenging the Imperial Irrigation District's Equitable Distribution Plan was initiated by Michael Abatti, et. al. On August 15, 2017, a statement of decision was issued against IID by the Imperial County Superior Court, invalidating IID's EDP and mandating its repeal. The judgement also incorporated other provisions of great concern to IID, including a fundamental misunderstanding of the nature of the water rights held by IID and many legal errors that could jeopardize the Imperial Valley's historical water rights and restrict the district's ability to provide reliable water supplies to all of its customers in the future.

Therefore, the district filed an appeal with the California Fourth Appellate District Court to overturn the trial court's ruling in *Michael Abatti, et. al vs IID*.

## WHAT IF IID HAD NOT APPEALED?

If the decision stands, the discretion that is statutorily provided to irrigation districts under the Water Code to manage their water supplies will be vanquished. The result will be that efforts to prevent waste and unreasonable use of water and incentivize conservation will be compromised. Not only will local efforts to improve on-farm water use efficiencies be compromised, but allowing the trial court's ruling to stand will have adverse and far-reaching effects on longstanding interstate agreements on the Colorado River.

What's even more troubling, is the court's decision has undermined the publically elected IID Board of Directors' statutory authority making it almost impossible for it to continue operating effectively with constraints such as this. If this decision stands, it has the potential to impact every water user in Imperial County and every irrigation district in California.



## MAJOR LEGAL ERRORS IN THE LOWER COURT RULING

**TRIAL COURT STATEMENT: IID lacked authority to adopt the Equitable Distribution Plan.**

**FACT:** Vested by the Legislature, the IID Board of Directors is afforded specific authorities, including the discretion to manage its water supply. According to Water Code section 22252, “when any charges for the use of water are fixed by a district the water for the use of which the charges have been fixed shall be distributed equitably as determined by the board...”

**TRIAL COURT STATEMENT: The 2013 Equitable Distribution Plan is “a new, complete, fully integrated plan.”**

**FACT:** IID adopted the EDP in 2007 after it sought public input and conducted a thorough analysis. In 2013 IID adopted a revision to the plan, which does not override prior court validation nor does it exempt the plan from statutes of limitation.

**TRIAL COURT STATEMENT: As a trustee, IID “holds mere title to the water rights.”**

**FACT:** IID holds the water rights in trust for public uses as defined by the state Water Code, not Probate Code, and no water user holds an individual or higher right. In order to have standing under this trust, you merely need to be a resident of the valley and be able to put that water to reasonable and beneficial use.

**TRIAL COURT STATEMENT: Farmers’ beneficial interest is a “constitutionally protected property right” and subject to the no-injury rule.**

**FACT:** Landowners within the district have a right to water service, not an independent water right; the rule does not apply as there can be no injury when there is no individual water right.

**TRIAL COURT STATEMENT: Water for new industrial supply contracts can only be procured through “appropriate consideration.”**

**FACT:** The court decision implies that IID may be required to purchase water for new municipal, commercial and industrial customers from its agricultural water users, driving up costs and limiting economic development opportunities for non-agricultural water uses. IID is required to serve water to all of its customers, including municipal and industrial users. Each category of non-agricultural use has different water needs and is subject to different laws, regulations and contracts.

**TRIAL COURT STATEMENT: The only equitable and acceptable method of apportionment for IID is historical use.**

**FACT:** The court erred in ruling that other apportionment models, such as straight-line (which is commonly used throughout the West) or hybrid methodologies, are unlawful. Apportionments based on purely historical data would be unfair to those who have already invested in water efficiency measures. Of greater concern, though, is the court’s unconstitutional undermining of an elected board’s statutory discretion by imposing the judge’s personal choice of resource management tools that may actually encourage waste, penalize conservation and limit water supplies for new uses.



\*For copies of the appeal, EDP and other related documents, please visit [www.iid.com/edp](http://www.iid.com/edp).