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# IMPERIAL IRRIGATION DISTRICT

OPERATING HEADQUARTERS • P. O. BOX 937 • IMPERIAL, CALIFORNIA 92251

WD-EN

December 11, 1996

Mr. Tim Vasquez, Chief  
Environmental Analysis Branch A  
State of California  
Department of Transportation  
District 11, P.O. Box 85406  
San Diego, CA 92186-5406

Dear Mr. Vasquez:

The Imperial Irrigation District (IID) has the following comments regarding your notice of Preparation of a Draft Environmental Impact Report/Statement for the proposed State Routes 78 and 111 bypass in Imperial County near Brawley:

1. I will be your contact person for the project.
2. Please note that the US Army Corps of Engineers does not regulate waters in the IID's agricultural drains. These are man-made constructed drainage channels in upland areas that are exempt from the Corps' 404 permit regulations.

These drains which have been historically and presently maintained, are not "man-induced wetlands," but are agricultural drains with wetland vegetation present

3. The following needs to be considered by Caltrans in assessing the disposal of stormwater:

IID Regulation 36 states that the maximum diameter of any drainage pipe discharging into an IID drain shall be 12-inches. Caltrans' stormwater facility design will need to account for this requirement. Additionally, the loss of drainage storage volume resulting from the extension of drainage pipeline crossings necessary because of the roadway widening will require mitigation.

IID drains are constructed man-made irrigation drainage channels which are cleaned and maintained on an annual basis and are not marshes, bogs, swamps, or similar wetland areas as identified in the Corps' Wetlands Delineation manual. In so keeping with the Corps' definition, the IID would request that you use the terminology aquatic drain habitat or similar wording to describe habitat within IID drains.

4. The following should be noted regarding the potential relocation, rerouting, extending of existing siphons (drainage and irrigation) contained within the existing and proposed roadway alignments:

Your highway plan will most likely eliminate the cross-highway access of various IID canals and drains. Access is required for our zanjeros (ditch tenders) who must quickly drive along the canal making gate adjustments several times daily and for maintenance personnel with heavy equipment who perform their work on a periodic basis. In order to assure continued accessibility to our canals and drains and to minimize added trip mileage and travel times we ask that the travel distances across your proposed highway be minimized so that impacts to our agency are reduced.

Providing canal and drain access via frontage roads wherever feasible is a necessity. Where this it is not feasible, provide a utility access road/right-of-way along the field side of the highway right-of-way fence.

Caltrans should deal with the IID regarding the relocation of all irrigation and drainage facilities such as siphons, sumps, and deliveries (including pumps). In the past Caltrans has negotiated settlements with landowners for the relocation of delivery facilities which were actually IID facilities.

To clarify the responsibility regarding the operation, maintenance, replacement and repair of existing roadway siphons we wish to make you aware of the following; Water Code Section 7034, "Bridges maintained by county or state," Bridges or conduits ... which cross county highways ... shall ... be the sole responsibility of the county, so far as maintenance, repair, improvement for the benefit of the county, reconstruction, or replacement of such bridges and conduits are concerned. If any such county highways become state highways, **the state shall succeed to the foregoing obligations of the county.**

Water Code Section 7035, "Conduit crossing highway; presumption; repair, improvement or replacement", "Whenever any conduit for conducting water crosses a highway and no written records exist showing that the highway right-of-way existed prior to the conduit rights-of-way, it shall be conclusively presumed that the conduit was in place and lawfully maintained prior to the highway and such conduit shall be repaired, improved for the benefit of the public agency having jurisdiction over such highway, and replaced, if necessary, by the public agency having jurisdiction over such highway, provided that usual acts of maintenance of the conduit, such as cleaning the conduit of dirt or silt, shall be performed by and at the expense of the person using the conduit."

Water Code Section 7032, "Obstruction of highway," "Notes of Decisions," part 2. "Duty to bridge," In the absence of statute ... a highway constructed across a canal may not interfere with the use of the canal, and hence the public ... must bear the expense of building the bridge; the reason being that **the acquisition of a subsequent easement does not carry with it the right to injure or destroy a prior one.**"

Because Water Code 7034 clearly indicates that the State has entire responsibility for conduits, when the conduit needs to be replaced, such as when it has reached its useful life, the State is entirely responsible for its replacement. We would venture this to be the case because the need for the conduit exists because of the road, not vice versa, see Code 7032 above. This also nullifies Caltrans' past requests for a depreciation credit because if we were to provide a depreciation credit, then this would reduce the State's liability as noted in the Water Code. If the IID provided a credit, and if inflation did not exist, then the State's liability would be eliminated for a facility which had been fully depreciated.

To quote the Water Code, this project is for "improvement for the benefit of the county" (in this situation the State), and thus a depreciation credit would reduce the State's liability. We assume that most of the replacements/relocations fall under Code 7034, and possibly a very minor portion fall under Water Code 7035. Water Code 7035 provides the IID the same protection with the exception of keeping the pipe clean. Code 7035 also places the burden of proof on the State to show prior right. Because of this, at this time, we will assume that the State has 100 percent liability regarding any modifications to any facilities within the main or canal rights-of-ways for the benefit of this project.

Because of the wording of these statutes, we would assert that most of the irrigation and drainage facilities (with the exception of those which the State shows burden of proof) which cross State highways are the State's responsibility into perpetuity. This is probably why the previous agreements completed for interstate 8 specifically excluded depreciation and why the current agreements for highway 86 indicate that the State is responsible for the conduits forever. This also makes the State liable for all costs for the maintenance of most conduits which cross under State highways. We would also venture that these codes give the State salvage rights to existing materials and would nullify any potential betterment issues if the original conduit was installed undersized. In general we will size the conduits for the benefit of this roadway improvement, to ensure that their size is great enough to provide the design flow downstream of the proposed highway crossings. This is justifiable because this would have been the capacity of the channel prior to the existence of the road.

Caltrans should also note that the IID's standard method of water distribution and drainage is through open channel and not through siphons. The requirements of the highway is such that a siphon must be installed for the benefit of the highway. The installation of these siphons are an unnecessary modification to the IID's system and inhibit the IID's ability to properly maintain our facilities. This is probably the basis upon which the above Water Codes were written, and why the State is liable. Because of this fact the IID will bill Caltrans for all maintenance costs necessary to maintain proper service to our customers. In this situation we anticipate some problem with maintaining adequate flow through the proposed siphons due to the need to design around to existing channel hydraulics. This situation will more than likely require oversized pipe, creating low pipe velocities and thus sediment.

Please forward this information to any sections and divisions within Caltrans that compose agreements and/or deal with or negotiate settlements so that they are aware of these items and so that potential misunderstandings with adjacent landowners can be eliminated.

If you have any questions regarding the above information please telephone me.

Sincerely,



PAUL G. PESCHEL, P.E.  
Supervisor,  
Engineering Services

Enclosure

PGP:ga

Please note the following when applying for an encroachment permit:

1. The application should be signed by both the entity that will operate and maintain the facility and contractor installing the facility.
2. Provide a description of the work to be performed including but not limited to the following:
  - a. Purpose of activity.
  - b. Work, construction, or activity to be performed.
  - c. Materials to be used.
  - d. Method of construction to be used.
  - e. Construction schedule.
  - f. Contractor license number.
3. Construction shall meet the greater of the following standards:
  - a. District design standards.
  - b. District utility crossing standards (L-3086 sheets 1&2).
  - c. District pipe crossing detail (L-3076).
  - d. State, County, City, other public agency, or utility standards where applicable. **Documentation must be included with the application showing that these standards are met.**
  - e. State of California Department of Health Service standards for water mains and sanitary sewers. **Documentation must be included with the application showing that these standards are met.**