

PUBLIC WORKSHOP  
BEFORE THE  
STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD

In the Matter of: )  
 )  
Long-Term Transfer of Conserved Water )  
from Imperial Irrigation District to )  
San Diego County Water Authority )  
\_\_\_\_\_ )

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SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 30, 2005

2:05 P.M.

Reported by:  
Peter Petty

APPEARANCES

BOARD MEMBERS

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Tam Doduc

Richard Katz

STAFF MEMBERS

Celeste Cantu

Dana Heinrich

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ALSO PRESENT

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Scott S. Slater, Attorney  
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representing San Diego County Water Authority

Larry Grogan, Supervisor, District Two  
County of Imperial

Antonio Rossman, Attorney  
representing County of Imperial

Orbie Hanks  
Farm Service Providers

Nicole M. Rothfleisch, Executive Director  
Imperial County Farm Bureau

William I. DuBois, Consultant  
California Farm Bureau Federation

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## 1 P R O C E E D I N G S

2 2:05 p.m.

3 CHAIRPERSON BAGGETT: Well, thank you  
4 for bearing the fog and getting up here. Seems  
5 like it's January, the fog.

6 Anyway, good afternoon, and welcome to  
7 an informal workshop. I'm Art Baggett, Chair of  
8 the Board, here with my colleagues Richard Katz  
9 and Tam Doduc. And we are assisted today by Dana  
10 Heinrich, our Staff Counsel; Ernie Mona and Jerry  
11 Horner, Economist and Engineer, reverse order.

12 The purpose of this informal workshop is  
13 to get an update from the Imperial Irrigation  
14 District, San Diego County Water Authority and  
15 other interested parties on the socioeconomic  
16 impacts of the long-term conserved water transfer  
17 from IID to San Diego; and the steps that have  
18 been or will be taken to minimize or mitigate the  
19 socioeconomic impacts; and whether the State  
20 Board, under its reserve authority, should  
21 consider changes to the Board order to minimize or  
22 mitigate for socioeconomic impacts.

23 In addition, we'll hear an update from  
24 San Diego on the status of their progression  
25 towards implementation of the desal projects as

1 outlined in their urban water management plan.

2 The subject of this workshop is limited  
3 to these two issues. I would like to emphasize  
4 that other than the potential changes to mitigate  
5 for socioeconomic impacts, we are not considering  
6 reopening order 2002-13.

7 This workshop is being held in  
8 accordance with public notice dated July 11, 2005.  
9 I think you all know, if you intend to speak, to  
10 fill out the blue cards.

11 This is an informal workshop so there  
12 will be no sworn testimony or cross-examination of  
13 participants. But the State Board and our staff  
14 may ask clarifying questions.

15 The Board will not take any formal  
16 action at this workshop today. A court reporter  
17 is present to prepare a transcript of the  
18 workshop. Anyone who would like a copy must make  
19 separate arrangements with the court reporter.  
20 And if you could speak into the microphone; and if  
21 you have a card, I'm sure the court reporter would  
22 appreciate that.

23 So, we got all the cards? Any other  
24 ones? If not, then let's begin. I think we'll  
25 start out with Imperial Irrigation District, Mr.

1 Osias.

2 MR. OSIAS: Thank you. Good afternoon.  
3 David Osias for Imperial Irrigation District. I  
4 appreciate the Board's indulgence in accommodating  
5 our travel woes, and we appreciate the opportunity  
6 to speak today.

7 I want to touch briefly on two matters,  
8 and then more extensively on a third. I want to  
9 give the Board a quick status report that is  
10 relevant to the discussion of fallowing and  
11 socioeconomic impacts; a brief reminder of the  
12 background that caused fallowing to be part of  
13 this deal; and then focus our comments on the  
14 socioeconomic impacts to date and disagreements  
15 that have arisen regarding them.

16 As a reminder I guess it was about two  
17 years ago this month we concluded the evidentiary  
18 hearing. We then had a series of closing briefs,  
19 arguments, reconsiderations and ultimately  
20 concluded the record in December of 2002.

21 The transfer started October 3, 2003.  
22 And in that timeframe settlement with the United  
23 States was worked out; settlement with other  
24 parties. The negotiations that took place during  
25 this Board's proceeding regarding allowing

1 following into the deal which were led by Former  
2 Speaker Hertzberg, were consummated in writing.  
3 And we started delivering water in calendar year  
4 2003.

5 After the agreements were all signed  
6 some litigation arose. And as this Board knows,  
7 as a result of being a defendant in a suit brought  
8 by the County. The decision has been challenged.  
9 The current status of that is that the claims  
10 against the State Board regarding its decision and  
11 the defendants in that action was dismissed by the  
12 Superior Court. A writ was sought; an order in  
13 order to review that writ issued by the Appellate  
14 Court. And that case is stayed while the  
15 Appellate Court deliberates. No hearing yet  
16 scheduled on that.

17 Other litigation related to the  
18 transfers is also underway. A variety of farmers  
19 challenging IID's right to do transfers, or that  
20 the deal should be with them, or that it should be  
21 a better deal, or a variety of other theories is  
22 also pending in the same action. And also stayed.

23 In the meantime we've been transferring  
24 water and undertaking environmental mitigation.  
25 So, that's the background.

1           In 2003 we created for transfer to San  
2           Diego 3445 acrefeet of conserved water. We  
3           transferred 10,000 as required. And we utilized  
4           the inadvertent overrun program to make up the  
5           difference. And then we created fallowing in the  
6           following year to pay that back. And then that  
7           was forgiven by the Bureau in connection with  
8           other proceedings. And so we applied it to other  
9           obligations.

10           In 2004 we transferred 20,000 to San  
11           Diego. And in 2004 -- created by fallowing. And  
12           then we also created 15,000 acrefeet by fallowing  
13           that we delivered to the Salton Sea as part of the  
14           mitigation for the transfer.

15           I think it's important for this Board to  
16           put into context that IID, in addition to its  
17           contract with San Diego, has contracts in  
18           connection with the QSA with other parties,  
19           including the United States, Coachella,  
20           Metropolitan Water District. And pursuant to its  
21           contracts with the United States, and pursuant to  
22           a settlement with the United States, IID has  
23           agreed to pay back a certain volume of water to  
24           the Colorado River relating to California's use in  
25           the aggregate from 2001 and 2002. And there's a



1 payment schedule for that, and IID is creating  
2 that payback water also by fallowing.

3 And so it's important that when people  
4 discuss the impacts of fallowing they understand  
5 that the contract obligation of IID and San Diego  
6 for mitigation relates only to impacts caused by  
7 fallowing for purposes of transfer to San Diego or  
8 Salton Sea mitigation. It does not relate to  
9 impacts caused by the agreement to deliver water  
10 back to the river. And, in part, because the  
11 water came in earlier and was not the subject of  
12 the IID or San Diego deal, and was not -- want to  
13 say, economic activity was created from that  
14 higher volume of water used in those earlier  
15 years, and therefore the impacts of it are being  
16 offset by that earlier activity.

17 CHAIRPERSON BAGGETT: So this water back  
18 to the river is water for the mitigation on the  
19 river, itself?

20 MR. OSIAS: Yes. It's just left in the  
21 river.

22 CHAIRPERSON BAGGETT: For the habitat  
23 and all those other issues which were --

24 MR. OSIAS: Correct.

25 CHAIRPERSON BAGGETT: -- raised during

1 the hearing.

2 MR. OSIAS: Okay. And, in fact, as a  
3 percentage, at least for the first two years, by  
4 the way let me give you the volumes.

5 By agreement, over an eight-year period,  
6 IID has agreed to leave 18,900 acrefeet per year  
7 in the river. It also has the right to accelerate  
8 that if it can create more water early rather than  
9 doing it in later years, it can do it in early  
10 years. And IID has, in fact, been paying that off  
11 at a more rapid rate.

12 And so it delivered instead of 18-9 to  
13 the river in 2004, it delivered 25,881. So about  
14 7000 additional. And it's also going to do more  
15 in 2005. That's just because conditions are  
16 conducive to that in terms of sign-ups for  
17 fallowing, they have enough enrollment. And also  
18 because of the level of the river and issues  
19 regarding shortage. It was useful, the Bureau  
20 appreciated keeping water behind need at a higher  
21 elevation. So that's that background.

22 Now, the information that I'm going to  
23 share, including the information I just recited,  
24 comes from several sources. I don't have written  
25 comments. I can prepare them if the Board would

1 like to have these comments in writing.

2 But IID has been filing with the Board,  
3 every March, a report on the water transfer,  
4 reporting on the previous calendar year. So it  
5 filed one March '04 covering calendar year '03.  
6 Filed one March '05 covering calendar year '04.  
7 And it will continue to do so.

8 The water transfer data not only with  
9 respect to San Diego, but with respect to the  
10 river and other parties, to the Board's interest,  
11 even though not the subject of the decision, is  
12 being reported so the Board would have a full  
13 picture.

14 In addition, IID produces an annual  
15 water transfer report which covers not only the  
16 QSA transfers, but the old MWD/IID transfer. And  
17 which will cover the AAC lining transfer as that  
18 gets underway.

19 And produces annually a financial report  
20 which reflects both costs, revenues and  
21 expenditures related to all these transfers.  
22 Those are public records; they're on IID's  
23 website. And so much of this information that I'm  
24 going to talk about is there.

25 Following was not originally part of the

1 petition or the transfer request submitted to this  
2 Board. Fallowing became a topic before this Board  
3 in connection with the environmental review that  
4 was done for the conserved water transfer.

5 And as a result of a comprehensive  
6 environmental review the draft EIR and ultimately  
7 the final EIR revealed that the potential negative  
8 impacts of efficiency conservation by reducing  
9 inflow to the Salton Sea were greater than if  
10 transfers were done by fallowing, and thereby  
11 reducing the impact on the Salton Sea.

12 And this Board's order therefore  
13 reflects an accommodation for that as does the  
14 deal, as implemented.

15 There was a schedule for how much  
16 fallowing for transfer and how much fallowing for  
17 the Sea would be required to mitigate the  
18 transfer. Those are in the annual reports.

19 The first point I want to make about  
20 socioeconomic impacts is that to the extent  
21 fallowing can cease the issues about impacts will  
22 be reduced and then eliminated.

23 And why could fallowing cease? Well,  
24 again, the only reason fallowing was included in  
25 the deal to begin with was in order to lessen

1 impacts on the Salton Sea while efforts to  
2 preserve, restore, mitigate the Sea were underway.

3 This Board's conclusion that we ought to  
4 know what's going to happen with the Sea within 15  
5 years, I think, has been borne out. And, in fact,  
6 after the decision in 2002 the Legislature of  
7 California said we would like to know what's  
8 recommended by the end of 2006, which is three  
9 years after the deal -- four years after the deal  
10 started.

11 The Board knows that if the Salton Sea  
12 restoration and the preferred alternatives  
13 selected by DWR by the end of 2006 can accommodate  
14 a restoration habitat preservation plan that does  
15 not require the same volume of inflow to mitigate  
16 the transfer, and the fallowed water can a) become  
17 efficiency created water, and b) rather than going  
18 to the Sea, can be sold by DWR to the Metropolitan  
19 Water District for \$250 an acrefoot above what  
20 they would get it from us for, which is nothing,  
21 and that money can be used to finance restoration.

22 So, we stand here, in part, to encourage  
23 the State Board to encourage in whatever method  
24 possible DWR to select a preferred alternative by  
25 2006; and to influence one that would accommodate

1 reduced inflows to the Sea so that the fallowed  
2 water can help finance the restoration and no  
3 longer be fallowed water.

4 The fallowing period of 15 years then  
5 would be reduced if we assumed a preferred  
6 alternative at the end of 2006, an implementation  
7 plan, let's say, for two more years that ended in  
8 2008; we're only six or seven years into the  
9 transfer, and we would reduce the fallowing period  
10 by half. But the volumes of fallowed water in the  
11 first half are closer to 30 percent of the  
12 volumes, and it's very back-weighted in volumes.  
13 So there's a tremendous fallowing impact benefit  
14 by elimination of impacts and the elimination of  
15 fallowing that will follow from Salton Sea  
16 restoration.

17 Second point is to talk about the  
18 funding of mitigation and the contract terms that  
19 relate to the accommodation of fallowing by IID  
20 and San Diego. And, again, as I said, the  
21 contract originally provided for efficiency. And  
22 when the switch to fallowing took place three or  
23 four major concessions occurred.

24 First, IID waived a price premium  
25 related to shortages for 15 years. That is under

1 the contract the price would increase from  
2 anywhere from 5 to 100 percent in the event of  
3 certain defined shortages, northern California,  
4 Colorado River, or otherwise. And because of the  
5 following period IID waived that.

6 Second, IID agreed to contribute \$20  
7 million to socioeconomic mitigation from transfer  
8 revenue. And third, San Diego agreed to pay for  
9 everything above \$20 million.

10 The \$20 million is funded in two ways.  
11 First, San Diego advances 10 million; then IID  
12 advances 10 million; then IID repays San Diego 10  
13 million. So that's how IID is 20 million in.  
14 Anything above 20 million comes from San Diego.

15 The contract defines very specifically,  
16 with great detail, as a result of economists  
17 participating in negotiations, what impacts are to  
18 be measured; how those impacts are to be measured;  
19 and when those impacts are to be measured.

20 And the contract also contains a dispute  
21 resolution process where if there's disagreement  
22 between IID and San Diego over the meaning of the  
23 contract or the implementation of the contract,  
24 there's first what's called an administrative  
25 committee meeting among representatives to see if

1 they can resolve their disputes.

2 If that doesn't work, then a dispute  
3 panel, which is a larger group from each of the  
4 agencies, meets. And if that doesn't work, then  
5 there's binding arbitration.

6 The dispute and the contract does not  
7 provide for either part to cancel the contract in  
8 the event that they're unhappy with the outcome of  
9 the arbitration. This dispute mechanism has been  
10 triggered. We are in the first states. We're in  
11 the administrative committee level. We have been  
12 meeting. IID believes progress has been made.  
13 And is cautiously optimistic that we won't need to  
14 go beyond this first step of the dispute process.

15 But, it is important to know that there  
16 is a mechanism for solving it even through third-  
17 party binding arbitration.

18 So, what are the disputes about? Well,  
19 the disputes have erupted in part because of the  
20 work of the three-economist panel, which are  
21 charged with really only one thing: implementing,  
22 as the contract requires, the measurement of the  
23 impacts.

24 The panel does not describe how to  
25 mitigate them; does not select what should be



1 chosen to mitigate; nor does the panel have any  
2 role in deciding how IID should spend its money,  
3 or should have spent its money. It's actually  
4 only to look at what was done.

5 We have two reports from this panel so  
6 far. The first report was approved by two and  
7 rejected by one of the three-panel; and the second  
8 report had only two participate because the third  
9 had disagreed with the conclusions of the first.

10 And what's the dispute about? Well, the  
11 dispute among the panelists and with IID involves  
12 three major problems with the reports. And the  
13 problems we believe are so material that in the  
14 vernacular of the school ground a do-over is  
15 required. These reports are not credible; provide  
16 no basis for assessing what actually has happened.

17 The problems fall into these three  
18 areas. First, by agreement, the panel was  
19 supposed to do things and it didn't do them. And  
20 therefore, you can't judge what the impacts are as  
21 defined by the agreement till the panel does them  
22 as the agreement requires. They did not follow  
23 the procedures; they did not look only at impacts  
24 attributable to fallowing, as compared to impacts  
25 attributable to other things. And so that's a

1 major source of disagreement.

2 Second, the panel speculated on what  
3 could have been done with money rather than  
4 measuring what was, in fact, done with money.  
5 Again, something that violates the contract, at  
6 least that IID contends, and not relevant to the  
7 actual assessment. So we have these contract  
8 application disputes.

9 Second source of error is that the panel  
10 had bad data. They didn't properly do their  
11 homework. The errors flow into such simple things  
12 as they have the wrong volumes of water being  
13 involved in the wrong years. They have the wrong  
14 dates for payment. They have the wrong amounts of  
15 payments. And they have the wrong uses of the  
16 funds. They also, we believe, made errors with  
17 respect to farm budgets.

18 And then the third source of error is  
19 that they used the bad data and exercised poor  
20 judgment. For example, in some places they used  
21 gross impacts instead of net impacts. In others,  
22 they utilized the negative impacts caused by the  
23 fallowing for San Diego and the Salton Sea, but  
24 they used the revenue paid to farmers for all the  
25 fallowing including water left in the river. So

1 there's just an inconsistency in approach.

2 In order to better illustrate these  
3 errors IID has asked, as San Diego's testimony  
4 acknowledges, Dr. Smith to redo 2003 and 2004 in a  
5 way --

6 (Cellphone ringing.)

7 BOARD MEMBER KATZ: That's probably  
8 Rodney.

9 MR. OSIAS: And I have his answer. In a  
10 way that would illustrate what should have been  
11 done.

12 BOARD MEMBER KATZ: The only reason  
13 Art's here is he thought Dr. Smith was going to be  
14 here.

15 (Laughter.)

16 MR. OSIAS: We're trying to avoid the  
17 debate about whether it was a --

18 CHAIRPERSON BAGGETT: Phi Beta Kappa.

19 MR. OSIAS: -- it was a chart or a --

20 (Laughter.)

21 BOARD MEMBER KATZ: -- and there's a  
22 charter-graph.

23 MR. OSIAS: Charter-graph.

24 CHAIRPERSON BAGGETT: Charter-graph was  
25 the other we debated.

1 MR. OSIAS: Right.

2 CHAIRPERSON BAGGETT: That's one of the  
3 high points of the --

4 MR. OSIAS: I guess I'd say a fourth  
5 problem with the reports is that they're not  
6 transparent. That is, there are assumptions;  
7 there are methodologies; there are formulas. And  
8 you couldn't pick up a report and replicate it.  
9 The work papers aren't available; the reports are  
10 not, therefore, self-contained -- are not self-  
11 contained, and so Dr. Smith is preparing one where  
12 you will see where he got data; why he used the  
13 data. There may be disagreements about the  
14 conclusions, but at least the methodology is  
15 consistent with the contract.

16 And we expect that report -- and this  
17 relates to the timing of this workshop -- we  
18 expect that report in two weeks. And it was  
19 commissioned before this was set. It would be  
20 relevant if we submit something in writing; that  
21 report would go with it. And I think it will be  
22 immensely helpful, at least in illustration of  
23 where good data exists, how to use it, and what  
24 the contract requires. And, again, there may  
25 still be professional disagreements, but at least

1 we will be in the same ballpark talking about the  
2 same thing.

3 But I do have, from Dr. Smith, the  
4 dollar conclusion in round numbers that he has  
5 reached for 2003 and 2004 negative impacts. Now,  
6 remember, these are not tremendously large volumes  
7 of water for which mitigation is required. It's  
8 only the transfer to the Sea and the transfer to  
9 San Diego. And the aggregate impact for negative  
10 impact for 2003 and 2004 is \$1.21 million of  
11 negative impact in the Valley as a result of that  
12 following.

13 That breaks down to about 64,000 in  
14 2003, for which we had a very small volume of  
15 water. And 1.1-something for 2004.

16 I think the other thing that's  
17 interesting to note is if you use the full year of  
18 2004 as an example, if impacts grow as volumes  
19 grow, and you assumed a straight line, the 20  
20 million number, which again is what IID is  
21 funding, although San Diego is advancing 10 of it  
22 and we're repaying them, that threshold is crossed  
23 somewhere between 2008 and 2009. And that's just  
24 coincidental with sometime around when perhaps  
25 we'll know what's happening with the Salton Sea.

1           So it may be that substantial impacts  
2           from the later transfer years, and disagreements  
3           about them, --

4           CHAIRPERSON BAGGETT:  When is it, the  
5           end of 2006 --

6           MR. OSIAS:  Is the deadline for  
7           identifying --

8           CHAIRPERSON BAGGETT:  So DWR has to have  
9           the report finalized by the end of 2006?

10          MR. OSIAS:  For the preferred  
11          alternative.  Somewhere between identifying the  
12          preferred alternative and implementation of the  
13          project will be some time after 2006, hopefully  
14          soon after, we might be able to change this  
15          fallowing paradigm.

16          And if we did so, at least based on  
17          these preliminary numbers from Dr. Smith, we will  
18          be within the \$20 million which is already  
19          budgeted for and probably would remove a lot of  
20          existing tension between IID and San Diego on  
21          funding of surplus where they don't -- about 20,  
22          where they don't believe there will be.

23          My last set of comments relates to the  
24          relationship between the funding source, which is  
25          IID and San Diego, and the mitigation selection

1 decisionmaking process, which is through an entity  
2 created, which is called in the vernacular, the  
3 local entity.

4 The local entity is an 11-member group  
5 containing two representatives of the IID Board,  
6 two from the County of Imperial Board, two from  
7 the Imperial Valley Area Governments IVAC --  
8 Association of Governments, sorry -- one  
9 representative of the Chamber of Commerce, one  
10 from agriculture, one from ag labor and two at  
11 large.

12 And they are charged by the contract  
13 that IID and San Diego signed with deciding how to  
14 spend money to mitigate the impacts. And their  
15 goal is to eliminate the impacts by their  
16 expenditure choices.

17 Others may address the local entity more  
18 than I will. As a progress report, they have had,  
19 as far as I know, significant debates on what to  
20 do and how much it should cost, and how much  
21 stimulus it will create to offset impacts.

22 Mitigation is -- pardon me,  
23 socioeconomic mitigation is defined by the  
24 contract as an after-tax impact. So, if you  
25 handed a dollar to someone to mitigate for a

1       dollar of impact, and the someone had to pay taxes  
2       of 20 cents, then they only got 80 cents of  
3       mitigation under the contract. So you'd have to  
4       pay them \$1.20 roughly to offset the dollar  
5       impact.

6                On the other hand, if you could fund a  
7       program for 80 cents that eliminated a dollar of  
8       impacts then you wouldn't have to pay the full  
9       dollar. And so the mitigation decision, the  
10      method of mitigation, is what determines the level  
11      of contribution. The impact measurement is what  
12      defines the problem that needs to be solved. I  
13      think many people have forgotten to read the  
14      contract that the payment obligation is not just  
15      the impact amount; The payment obligation is to  
16      pay for the mitigation to eliminate the impact  
17      amount. And it could be more or it could be less.  
18      It could be a lot more or a lot less or very  
19      close.

20               We believe the State Board need not  
21      reopen its decision. We would encourage, as I  
22      said before, the State Board to be in contact with  
23      DWR to provide timely encouragement for the Salton  
24      Sea restoration alternative being picked. That to  
25      the extent they can help with the Legislature to



1 fund that alternative; and to be prepared to  
2 entertain suggestions from IID and others for  
3 allowing IID to eliminate the following, I think  
4 would go a long way to eliminating the magnitude  
5 of any socioeconomic impact dispute.

6 I'm prepared to answer any questions. I  
7 appreciate your time. I can put it in writing, it  
8 you wish.

9 CHAIRPERSON BAGGETT: I have no  
10 questions at this time. I don't know if the  
11 staff?

12 BOARD MEMBER KATZ: I have one question,  
13 Mr. Osias. If you would define for me third-party  
14 harm as you understand it.

15 MR. OSIAS: It is actually defined in  
16 the contract and I'm not sure my memory or  
17 paraphrasing will be accurate. But there are two  
18 components that are specifically called out for in  
19 the agreement.

20 One is loss of tax revenue to the  
21 County. And the second is loss of income from  
22 residents of the County, I believe. And I'm  
23 pausing because I don't want to mix up -- there's  
24 a definition for mitigation and there's a  
25 definition for impacts. And they're obviously

1 related, and I may be merging them.

2 The contract is an exhibit to San  
3 Diego's testimony and that provision is defined  
4 there.

5 BOARD MEMBER KATZ: I guess I'm curious  
6 in terms of the local entity, -- the three-person  
7 panel, which is one by them, one by you and one  
8 that everybody agreed to, is the best way to put  
9 it, I guess?

10 MR. OSIAS: That the two agreed to.

11 BOARD MEMBER KATZ: The two agreed to.

12 MR. OSIAS: Right.

13 BOARD MEMBER KATZ: And so the guy  
14 that -- so one of the people that you all agreed  
15 to has come out with findings that you now  
16 disagree with, and therefore have pulled out of  
17 the process?

18 MR. OSIAS: No.

19 BOARD MEMBER KATZ: Well, you said you  
20 disagreed with the conclusions?

21 MR. OSIAS: Yes.

22 BOARD MEMBER KATZ: So that sounds like  
23 conclusions you don't agree with.

24 MR. OSIAS: Yeah, but the pulled out of  
25 the process isn't right.

1           BOARD MEMBER KATZ: Well, but for the  
2           2005 report, did IID submit the documents they'd  
3           asked for?

4           MR. OSIAS: Yeah, the report, which  
5           apparently you've read, is incorrect with respect  
6           to the IID refusal to turn over information. Just  
7           flat out wrong.

8           BOARD MEMBER KATZ: Okay.

9           MR. OSIAS: And the information is  
10          available. And, no, the IID didn't refuse to let  
11          the other member participate.

12          BOARD MEMBER KATZ: So all that stuff  
13          that's written in that report that has the two  
14          signatures on it, I guess Mitchell and Sunding, is  
15          they're both wrong on there?

16          MR. OSIAS: They're wrong about that,  
17          and other things, yes.

18          DR. HORNER: Excuse me, one question.

19          CHAIRPERSON BAGGETT: Yes.

20          DR. HORNER: Let me see if I get this  
21          straight. In '03 Dr. Smith is estimating a loss  
22          of \$64,000, is that right?

23          MR. OSIAS: Net negative impact, that's  
24          correct.

25          DR. HORNER: Okay. And Sunding

1 estimates it at negative \$199,000, right?

2 MR. OSIAS: I don't know what Sunding  
3 estimates it at.

4 DR. HORNER: Well, that's what the  
5 report said.

6 MR. OSIAS: Okay.

7 DR. HORNER: Okay. '04 Sunding  
8 estimates the benefit at \$1.3 million.

9 MR. OSIAS: Correct.

10 DR. HORNER: And Smith estimates the  
11 loss at 1.1, right?

12 MR. OSIAS: Correct.

13 DR. HORNER: Well, --

14 MR. OSIAS: Correct as to Smith, and I  
15 take your word for Sunding.

16 DR. HORNER: Okay. Do you have any  
17 sense of why the contradiction of trends between  
18 those two years? Is it --

19 MR. OSIAS: Yes. I think Dr. Sunding  
20 and Dr. Mitchell didn't have any reason to believe  
21 that the volumes of water they identified in 2003  
22 and the payments that they assumed were made in  
23 2003, they didn't take place, and they just  
24 assumed they did, in different volumes, and they  
25 produced a negative impact.

1                   For example, as I reported and as the  
2                   State Board report shows, IID only created for  
3                   transfer to San Diego 3650 acrefeet; and created  
4                   no conserved water for the Salton Sea in 2003.  
5                   Okay? And those are the only two things where  
6                   negative impacts are supposed to be measured.

7                   DR. HORNER: Is that in the contract?

8                   MR. OSIAS: Yes.

9                   DR. HORNER: Sure need the contract.

10                  It's hard to read these reports without the basis  
11                  for what should be in them.

12                  MR. OSIAS: The reports are not self-  
13                  contained. That's one of the problems.

14                  DR. HORNER: Okay.

15                  MR. OSIAS: And so I believe they  
16                  assumed 15,000 acrefeet was transferred in 2003.

17                  DR. HORNER: That's correct.

18                  MR. OSIAS: Instead of three. That's  
19                  the significant variance.

20                  DR. HORNER: How's it so wrong? I mean,  
21                  you had a representative on the panel, did you  
22                  not?

23                  MR. OSIAS: Yeah.

24                  DR. HORNER: And he signed off on the  
25                  first year, didn't he?

1           MR. OSIAS: He did not. He did not sign  
2 off on the first report. He dissented at least as  
3 to two findings. One is the speculation about  
4 money. And the second --

5           DR. HORNER: Well, is your economist  
6 Gordon H. Kubota?

7           MR. OSIAS: Yeah. Do you not have the  
8 cover letter?

9           DR. HORNER: His name is right there.

10          BOARD MEMBER KATZ: I'm getting this  
11 terrible flashback to like 2003.

12          MR. OSIAS: By the way, one minor  
13 correction. The -- Kubota was actually selected  
14 by the local entity, not by IID.

15          DR. HORNER: Right.

16          MR. OSIAS: So, I know what you meant,  
17 but not technically IID's economist.

18          BOARD MEMBER KATZ: David, something to  
19 think -- I'm sorry, you looking at the cover  
20 letter?

21          MR. OSIAS: Well, I was just going to  
22 ask, do you have a October 8, 2004 cover memo from  
23 Kubota?

24          BOARD MEMBER KATZ: No.

25          MR. OSIAS: So you -- all right. He

1 identifies two headings where he --

2 CHAIRPERSON BAGGETT: Maybe you can just  
3 submit that --

4 MR. OSIAS: Sure.

5 CHAIRPERSON BAGGETT: -- for the record  
6 when we're done with Dr. Smith's report. We're  
7 going to keep the record open for 30 days, so.

8 MR. OSIAS: Okay.

9 CHAIRPERSON BAGGETT: I don't know that  
10 we're going to resolve this debate right now.  
11 We've got two other speakers --

12 BOARD MEMBER KATZ: Yeah, also, I guess,  
13 part of what -- I mean, Dr. Smith is IID's  
14 economist.

15 MR. OSIAS: Dr. Smith is IID's  
16 economist, that's correct.

17 BOARD MEMBER KATZ: I mean it's  
18 important to remember that in terms of -- just in  
19 terms of the positions taken on the data received.  
20 It's not the same as the supposedly neutral third  
21 party. No disrespect to Dr. Smith, obviously.

22 MR. OSIAS: No, no, he's --

23 BOARD MEMBER KATZ: Just I don't want to  
24 listen to him for two more hours.

25 But I guess part of what I'm trying to

1 figure out, I guess, and I'll -- we can go more  
2 into this in a minute, but I'm concerned, you  
3 know, when you talk about the third-party impact  
4 is certainly being defined so far much more  
5 narrowly than I certainly envisioned it when we  
6 were putting this whole thing together.

7 For instance, give you an example. The  
8 use of proceeds from the sale of water to  
9 stabilize ag rates, if this is in fact accurate in  
10 the documents, I'm giving you that piece, if it's  
11 in fact accurate, because at this point I have no  
12 way of telling what is or isn't unless it's  
13 covered in the cover letter, I guess, as an  
14 exemption.

15 But not to stabilize business rates.  
16 Both of which could contribute negatively to the  
17 economic viability of the community. So from an  
18 economic standpoint, if you're looking at the two  
19 criteria that you mentioned, David, and that being  
20 loss of tax dollars to the County or loss of  
21 income for residents of the County, a small  
22 business that has water rates that continue to go  
23 up and cannot continue in business obviously is a  
24 negative impact.

25 The fact that proceeds from the sale --



1           MR. OSIAS: I don't think residents  
2 means individuals.

3           BOARD MEMBER KATZ: I said business.

4           MR. OSIAS: Businesses can be resident  
5 to the Valley, so --

6           BOARD MEMBER KATZ: Right.

7           MR. OSIAS: -- a loss of income to a  
8 business I think would fit within that --

9           BOARD MEMBER KATZ: Well, that's what I  
10 was talking about. I was talking businesses.

11          MR. OSIAS: Yeah, so I --

12          BOARD MEMBER KATZ: I said small  
13 business. So, what I'm saying is but what I  
14 understand has taken place so far, money has been  
15 used to stabilize water rates on the ag side, but  
16 not on the business side, for instance.

17          Now, maybe that's bad information in  
18 this report. Maybe we ought to throw out the  
19 whole report and start over again, which is --

20          MR. OSIAS: Well, --

21          BOARD MEMBER KATZ: -- I know what you  
22 guys would like to do, but --

23          MR. OSIAS: It is bad information in the  
24 report. Let me give you --

25          CHAIRPERSON BAGGETT: Is your mike

1 turned on, by the way?

2 MR. OSIAS: That almost never prevents  
3 people from hearing me, but I don't know. Is that  
4 better?

5 CHAIRPERSON BAGGETT: Yeah.

6 MR. OSIAS: I'm sorry.

7 DR. HORNER: Hearing and  
8 understanding --

9 MR. OSIAS: There's a citation in the  
10 San Diego testimony, and I believe in the report,  
11 as to why they believe revenues were used for ag  
12 rates. And that's because in a bond offering  
13 there was a prediction that revenues would be used  
14 to stabilize rates.

15 There was actually -- let me just repeat  
16 because I know you were in a conversation -- in a  
17 bond offering IID did to help finance the  
18 acquisition of some land it pledged revenues, all  
19 of its revenues, to collateralize some public  
20 bonds. There's a public bond offering document  
21 where you can find lots of disclosures about what  
22 goes on.

23 And in a section of it they talked about  
24 stabilizing rates in the future from revenues,  
25 okay. That's the only evidence cited either in

1 the testimony or in these reports for rate  
2 stabilization.

3 What happened in 2004 and what's  
4 happening in 2005, I would direct your attention  
5 to the financial reports filed and prepared by IID  
6 through their controller and all, with what's  
7 happened.

8 Now, let me go to your basic question  
9 which is there are negative impacts, and what  
10 should be measured by definition under the  
11 contract. And there are stimulus which reduce  
12 negative impacts, and which of those should count.

13 And they have a common test. That is if  
14 it's a stimulus it has to be attributable to  
15 falling. And if it's a negative it has to be  
16 attributable to falling, okay.

17 So, if you subsidize the rate to offset  
18 a harm to someone because of a falling impact it  
19 would count. If you subsidize a rate in order to  
20 give relief to the elderly, it wouldn't count  
21 unless you could prove it was attributable to  
22 falling. Same thing with negative impacts.

23 BOARD MEMBER KATZ: So the 1.9 million  
24 that's indicated on table 2 or table 5 that's  
25 going for rate stabilization is merely a

1 misreading of a bond offering?

2 MR. OSIAS: As to that year, yes. As to  
3 what happened in calendar year 2004 -- is that the  
4 year they're talking about?

5 BOARD MEMBER KATZ: They're actually  
6 looking at -- they're looking at, it says 2005 on  
7 it, so I'm not sure.

8 MR. OSIAS: Okay. And, in fact, rates  
9 went up in 2005. So, there is a -- I started  
10 with, I hope I started with, there is a large data  
11 problem. And there is a complaint about the data  
12 problem even in the reports. We don't disagree  
13 that they have a data problem, we just disagree  
14 with the reasoning.

15 BOARD MEMBER KATZ: Just let me ask this  
16 just so I can get it complete, and then I'll back  
17 off -- did rates go up less than they were  
18 anticipated going up because of rate  
19 stabilization? Or did they -- was transfer money  
20 used at all in 2004 or 2005 to offset, mitigate,  
21 change, effect in any manner, shape or form,  
22 rates?

23 MR. OSIAS: I think the financial report  
24 would show that as a result of use of transfer  
25 revenues rates did not go up like they did in

1       2005. And I think the reason, in part, was  
2       because revenues were used to pay -- actually,  
3       that's backwards. I'm not sure. Give you the  
4       honest answer. I need to get the financial report  
5       out.

6                   BOARD MEMBER KATZ: All right.

7                   MR. OSIAS: But that's -- let me go  
8       through. Each of those line items, where the  
9       money went, including, I think, the report  
10      identifies 2.1 million of unaccounted-for money.  
11      I mean every penny is accounted for in our  
12      financial statements.

13                  BOARD MEMBER KATZ: I assumed the 2.1  
14      was Carter's.

15                  MR. OSIAS: Payment to a local resident.

16                  BOARD MEMBER KATZ: Economic stimuli?

17                  MR. OSIAS: If it was attributable to  
18      fallowing it would be a stimuli. And I think  
19      that's the nexus test that is actually missing in  
20      the report, is where did the money actually get  
21      spent and why.

22                  I think we're not asserting -- let me  
23      just make sure I can be clear, because I don't  
24      have the particulars in front of me, and I  
25      apologize -- but we're not asserting that if

1 following is a reason for rate stabilization, the  
2 rate stabilization is nonetheless ignored.

3 There has to be a nexus to fallowing for  
4 stimulus and for negative impacts. I'll give you  
5 another example.

6 BOARD MEMBER KATZ: Well, but -- I'm  
7 sorry, but if there's land fallowed, and so the  
8 John Deere dealer in town doesn't sell as much  
9 tractor or the seed shop doesn't sell as much  
10 seed, then the fact that it's used on water rates  
11 for the grower only, and not to offset economic  
12 impact on the tractor shop or the seed business,  
13 let alone farmers, and we'll get to that later. I  
14 mean that seems to me, at least on the surface,  
15 again, so we don't have to repeat this all the  
16 time, I'll add the big asterisk assuming numbers  
17 are right here, when we get that all cleared up,  
18 so I don't want to have to repeat that disclaimer  
19 every time.

20 But, it seems to me to be inequitable in  
21 that sense in terms of the fact that the business  
22 in town is also impacted by that fallowing because  
23 those two businesses are related, the farm and the  
24 town. And yet the rate stabilization appears to  
25 be to the benefit of one and not the other.

1           MR. OSIAS: Okay. I think we're  
2           confusing two topics.

3           BOARD MEMBER KATZ: Wouldn't be the  
4           first time.

5           MR. OSIAS: Just accept the facts as  
6           they are, for a moment, as you said, --

7           BOARD MEMBER KATZ: Okay, for the  
8           discussion, okay.

9           MR. OSIAS: The purpose of the impact  
10          study is to say what losses are caused, those are  
11          negative; what positives are created, those are  
12          positive; and what's the net.

13          All, either side, positives or  
14          negatives, attributable to fallowing. Then money  
15          goes in, and so under your example, the local  
16          entity could decide these farmers already got a  
17          benefit, so we should spend the money on the net  
18          negative on the businesses.

19          We shouldn't confuse the calculation of  
20          what the net impact is with who should be the  
21          recipient, if anyone, of a mitigation program.

22          BOARD MEMBER KATZ: Agreed. Agreed.

23          MR. OSIAS: Okay. And I think the  
24          difference, going back to the question over here,  
25          that Dr. Sunding concluded as between 2003, the

1 positives were outweighed by the negatives, and in  
2 2004 apparently the negatives were outweighed by  
3 the positives. So there's nothing to mitigate in  
4 2004 because he has a net positive, even though he  
5 would identify some negatives to some segment.

6 BOARD MEMBER KATZ: Are the positives  
7 and negatives on a fiscal year only?

8 MR. OSIAS: They're not on a fiscal  
9 year; they're on a calendar year.

10 BOARD MEMBER KATZ: But just within  
11 that, so in other words, whatever --

12 MR. OSIAS: And the answer is no.

13 BOARD MEMBER KATZ: Okay.

14 MR. OSIAS: They're to be measured.

15 BOARD MEMBER KATZ: Right.

16 MR. OSIAS: And this is, again, another  
17 area of confusion by the economists. They are to  
18 be measured on an actual, as best we can tell,  
19 what happened. They are to be estimated for  
20 purposes of planning. And ultimately they're to  
21 be determined on a cumulative basis.

22 BOARD MEMBER KATZ: Okay, so I guess  
23 we're --

24 MR. OSIAS: So we're sort of very early  
25 for the second two things, right? Planning and



1 cumulative, we don't have a lot of experience.

2 BOARD MEMBER KATZ: Sure, you don't have  
3 a lot of time for cumulative. I understand. I  
4 guess the part that I'd like somebody, because we  
5 go through this, to at least address for me, is  
6 I'm trying to still figure out the equity if you  
7 have that same situation and you've offset through  
8 the variety of the financing mechanisms or  
9 whatever it is, you offset or stabilize the price  
10 for party A of water, but not the price for party  
11 B. Because they still, in my mind, still seem to  
12 be connected.

13 MR. OSIAS: Well, and assuming you had  
14 an attribution clause you'd have an impact that  
15 would need to be mitigated unless one's worth the  
16 other. And that maybe is where you're focusing  
17 your question on, that is you could do it with  
18 businesses or residents, or you could do it with  
19 labor --

20 BOARD MEMBER KATZ: Go business and ag,  
21 just --

22 MR. OSIAS: -- labor or owners. But you  
23 can have an impact to party A and a benefit to  
24 party B, okay; and the goal of the economists was  
25 to study the overall impact in the area under the

1 agreement for purposes of calculating is this  
2 overall bad or overall good, okay.

3 Now, one of your questions might be  
4 well, why is that the approach.

5 BOARD MEMBER KATZ: Wasn't my question.

6 MR. OSIAS: Okay.

7 BOARD MEMBER KATZ: But it was that it  
8 would be interesting if the economist came to the  
9 conclusion somehow that the impact on the ag was  
10 such that you needed to stabilize their rates, but  
11 the overall impact for the County was so  
12 beneficial that you didn't have to do anything for  
13 the small businessperson.

14 I mean, because that's what you're  
15 saying could happen. What you're saying is one  
16 could be subsumed by the other.

17 MR. OSIAS: Correct.

18 BOARD MEMBER KATZ: And you have the  
19 small businessperson hanging out to dry, and the  
20 other getting rate stabilization.

21 MR. OSIAS: And you could have that  
22 without fallowing, even.

23 BOARD MEMBER KATZ: But we're talking  
24 about with fallowing, though.

25 MR. OSIAS: Well, but take the example

1       that existed before there was fallowing and before  
2       there was any, therefore, mitigation component  
3       whatsoever.

4               Efficiency conservation, which was the  
5       goal of this program and remains the goal of this  
6       program, will have impacts. Any change will have  
7       impacts. Some will be positive and some will be  
8       negative.

9               If you automate something that was labor  
10       you'll have a negative labor impact. But you'll  
11       have a positive impact with respect to  
12       construction, with respect to operation,  
13       maintenance, sale of parts, especially if they're  
14       local, okay.

15               And an assessment of that displacement  
16       can be done --

17               BOARD MEMBER KATZ: I agree, but you're  
18       actually --

19               MR. OSIAS: -- and wasn't going to be  
20       impacted. Now, the IID -- bear with me -- the IID  
21       can choose to use its revenues to maximize  
22       whatever goal it has with respect to its water  
23       rates and none of that would have been  
24       attributable to fallowing in the efficiency side.

25               So when we get to the fallowing side we

1 need to look to see what's caused by the  
2 following, not --

3 BOARD MEMBER KATZ: I understand.

4 MR. OSIAS: Okay.

5 BOARD MEMBER KATZ: But I'd be  
6 completely -- I'd be surprised, again, if when you  
7 measured that somehow it turned out that all of  
8 the impact that needed to be stabilized, if you  
9 will, in terms of rates, was on the ag side, and  
10 none of it was on the business side.

11 Take my example, up 5000 feet away from  
12 the John Deere guy, and just say the whole  
13 business community. You know, I've not seen -- in  
14 your example you said correctly, I think, that  
15 it's not necessarily the John Deere guy, because  
16 the John Deere guy could be offset by the person  
17 who sells -- who does laser leveling of the  
18 fields, or the person who sells construction  
19 equipment for the irrigation system that's going  
20 to go in. So in the business community that sort  
21 of offsets each other.

22 But I'm at a loss to see how that there  
23 can be -- it can be so negative that the rate  
24 stabilization has to occur on the ag side, because  
25 that's where most of the cash is going, to that or

1 IID, and only in the business side it all works  
2 out so there's no stabilization on there.

3 Unless I'm wrong in my assumption that  
4 there is -- and, in fact, there is a stabilization  
5 taking place on the business side. But I haven't  
6 seen any evidence of that.

7 MR. OSIAS: Well, a couple facts that  
8 are packed into your question. One, I think it's  
9 at least 98 percent of the water is ag, in terms  
10 of use. It may be higher than 98 percent.

11 Second, the John Deere dealer --

12 BOARD MEMBER KATZ: It ought to be cheap  
13 to mitigate rates for the non-ag folks.

14 MR. OSIAS: The John Deere dealer  
15 probably doesn't use any water except in his  
16 restroom. So you could give him a \$100 rate  
17 stabilization --

18 BOARD MEMBER KATZ: Well, he washes  
19 them.

20 MR. OSIAS: Maybe he washes his  
21 tractors, but in Imperial Valley I sort of doubt  
22 it. So, rate stabilization would not be -- if you  
23 were worried about a disproportionate impact on a  
24 John Deere dealer, rate stabilization would be a  
25 very foolish tool to try to get it to him.

1           BOARD MEMBER KATZ: Well, it can be --  
2 rate stabilization happens to be what we have in  
3 front of us. It could be any tool on the business  
4 side.

5           MR. OSIAS: Right.

6           BOARD MEMBER KATZ: I'll wait, David,  
7 until --

8           MR. OSIAS: Okay. I think the other --  
9 let me just say one other thing. The water rate,  
10 the IID has revenues from two sources, power and  
11 water. The water rate has funded, you know,  
12 funded all the expenses with these hearings that  
13 led to this approval; all the negotiations; and  
14 the millions and millions of dollars of  
15 environmental review.

16           And so when revenues come in in the  
17 first year or the second year of the deal, and  
18 they decide to pay for lawyers, consultants,  
19 engineers to implement the transfer from the  
20 revenues, instead of raising the rates maybe like  
21 they did from '99 through 2002, where there was no  
22 deal revenue yet, okay, so you see the revenues  
23 being flat, okay. Is that attributable to  
24 fallowing? Or is that finally accrued expenses  
25 which have been funded solely by water rates are

1 now getting funded by water rates plus transfer  
2 revenues? Okay.

3 I think that's the way you ask that  
4 question.

5 BOARD MEMBER KATZ: You could also ask  
6 that question, though, in terms of that as a  
7 function of the water district, then should that  
8 cost be borne by whatever dollars the water rights  
9 holders or the water rights interests in the  
10 district have, not from the -- you know, out of  
11 their pocket as opposed -- because they're  
12 benefitting from the water transfer, also -- as  
13 opposed to coming out of the general fund, for  
14 lack of a better term.

15 MR. OSIAS: There is no general fund.

16 BOARD MEMBER KATZ: Well, the general  
17 pot I'm talking about.

18 MR. OSIAS: There's only two sources of  
19 revenue, water and power.

20 BOARD MEMBER KATZ: No, that's not --  
21 all right.

22 CHAIRPERSON BAGGETT: Any other  
23 questions?

24 MR. OSIAS: I'm sorry, yeah, any other  
25 questions?

1                   CHAIRPERSON BAGGETT: I'm sure there  
2 won't be. Thank you.

3                   MR. OSIAS: I'll reserve five minutes.  
4                   (Laughter.)

5                   CHAIRPERSON BAGGETT: Mr. Slater.

6                   MR. SLATER: Well, it has been three  
7 years, Chairman Baggett, Members of the Board,  
8 Scott Slater, Special Counsel to the San Diego  
9 County Water Authority.

10                   In the spirit of the response to the  
11 notice of the workshop I'm here today. We filed  
12 comments with you yesterday which I believe were  
13 distributed. I don't want to repeat those  
14 comments; I think I want to make some salient  
15 points for your consideration, respond or carry on  
16 on some of the things that Mr. Osias mentioned.

17                   In addition, we brought with us today  
18 other people from San Diego who can respond to  
19 technical questions, to the extent that you have  
20 some and I'm not able to answer.

21                   With me today is Stephanie Hastings from  
22 our office; Maureen Stapleton, the General  
23 Manager, who you know; I believe Jim Taylor from  
24 the General Counsel's Office; Jim Bond from the  
25 Board, itself; Bob Yamada, who runs the ocean



1 desal project; Mr. Jacoby who is responsible for  
2 conservation; and lastly, Gordon Hess, who is  
3 responsible for imported water and implementation  
4 of the QSA.

5 I think we were originally supposed to  
6 address desal and socioeconomics, so why don't I  
7 delve into the desal real quick and cover that.  
8 And then I'll turn my attention to the  
9 socioeconomics.

10 When we were last before you there were  
11 questions raised about the viability of desal as a  
12 long-term initiative in San Diego County. At the  
13 time of the hearing we produced what was our then-  
14 existing urban water management plan, which  
15 included a commitment to desal on a go-forward  
16 basis, as you'll recall, and is contained in our  
17 exhibits.

18 We then projected that we would be able  
19 to roughly produce about 25,000 acrefeet of  
20 desalinated water in 2020 timeframe. And that we  
21 were obliged to come back to you and give you a  
22 progress report on how we were doing.

23 Well, since the time of the hearing the  
24 Authority has moved further into its  
25 investigation. It's examined, it's actually

1 prepared a master water plan, and done some  
2 additional reliability studies.

3 And in carrying on its follow-up  
4 studies, it has actually come to a deepened and  
5 accelerated commitment to desal. So, where we  
6 initially had a projection of 25,000 acrefeet in  
7 2020, we've moved that up to 2010, and more than  
8 doubled the commitment.

9 So our expectation now is that we'd  
10 actually produce 56,000 acrefeet by the 2010  
11 horizon. So that's an aggressive schedule. We  
12 hope to meet it. And all of the actions that the  
13 Authority's taking presently are consistent with  
14 that goal.

15 Why would we do that? Well, there is, I  
16 guess the State Board's interest in alternatives  
17 to transfer, but I think from the water supplier  
18 standpoint, San Diego took the position when it  
19 went in hunt of the water transfer and canal  
20 lining way back in the mid-'90s that it needed to  
21 engage in supply diversification. It needed to  
22 move off of a sole exclusive supplier for the  
23 Metropolitan Water District, and it's made  
24 commitments towards diversifying its supply and  
25 improving its water supply reliability.

1           If you take a look at page 3 of our  
2           submittal you'll see the Y cross-section of  
3           various sources, of which desal is pegged in at  
4           56,000 acrefeet in about 2010.

5           How are we going to do that? Well, I  
6           think, as our papers suggest, the effort was  
7           initially to identify a site. There are issues  
8           with the Coastal Commission and broader community  
9           about where to locate a desal site. There are  
10          energy issues that coincide with an economic  
11          operation.

12          We identified three sites. The Encina,  
13          the South County/Tijuana and the San Onofre. And  
14          of those three sites the Authority has elevated  
15          the Encina site to a preferred site, and has  
16          proceeded with the issuance of notice of  
17          preparation, scoping for environmental review  
18          process.

19          It has executed a memorandum of  
20          understanding and it is doing everything it can to  
21          move along on that location with the expectation  
22          that it would produce approximately 56,000  
23          acrefeet.

24          It's not wed to that site alone; it's  
25          still continuing to carry on and examine other

1 opportunities. But I think that the Authority is  
2 pleased with the progress to date, and we're  
3 ready, willing and able to answer any questions  
4 that you have regarding the progress of that  
5 project.

6 CHAIRPERSON BAGGETT: Let me, -- at  
7 least the one who had the interest in this -- I  
8 think, you'll recall, it was -- was it Wildlife  
9 Federation? Who was the party that had the  
10 growth-inducing impact argument, and that was, as  
11 I recall, your response to that is that transfer  
12 is not growth inducing. In fact, we relied on  
13 some of those findings.

14 And I think that, as I think as all  
15 know, we cannot mandate desalinization because of  
16 all the other various agencies involved in the  
17 permitting.

18 So I guess the only question, I guess,  
19 one at least, I think it pleases the Board that  
20 you are moving so aggressively towards, you know,  
21 that option. And shoring up or stabilizing your  
22 existing supplies by using desal.

23 How -- are the other agencies  
24 cooperating with that effort? There's regional  
25 boards, there's land use, there's fish agencies,

1 the Coastal Commission, does everything seem to  
2 be --

3 MR. SLATER: I think it's safe to say  
4 that it's a complex web, perhaps not any more  
5 complex than the QSA, but there are multiple  
6 agencies in buying that must be secure before we  
7 can move forward. We have memorandums of  
8 understanding in place. We're working with MET  
9 presently to try to secure some funding and  
10 contributions towards that. We negotiations  
11 ongoing with some of the regulatory agencies.

12 Your question, though, does trigger, in  
13 my mind, an important reply that we should keep in  
14 mind. When we were before you in 2002 we  
15 projected a 2020 demand of 813, and we represented  
16 to you at that time that it all was about supply  
17 mix. It wasn't about growth inducement.

18 And true to that our master water plan  
19 and the present expectation for the 2020 demand is  
20 sitting still at 813. We haven't adjusted that  
21 upward at all. So, again, it's solely about  
22 supply mix and reliability.

23 CHAIRPERSON BAGGETT: Okay. Well, I  
24 think this Board, you know, and this  
25 Administration, the Department of Water Resources,

1 I think you're aware of the bulletin 160 placing a  
2 lot of emphasis on desalinization. And this Board  
3 has been behind that for -- not just San Diego,  
4 but for numerous coastal rivers and shoring up  
5 water supplies up and down the coast.

6 So, just keep us posted. As a policy  
7 issue I think that's something that we'd be  
8 interested in following.

9 BOARD MEMBER KATZ: Is MWD still  
10 subsidizing the delta between northern water and  
11 desal?

12 MR. SLATER: At 250, 250.

13 BOARD MEMBER KATZ: At 250, okay;  
14 thanks.

15 CHAIRPERSON BAGGETT: Any other  
16 questions?

17 BOARD MEMBER KATZ: Just on the desal,  
18 but --

19 CHAIRPERSON BAGGETT: Oh, desal --

20 BOARD MEMBER KATZ: No, no.

21 CHAIRPERSON BAGGETT: Ready for  
22 economics?

23 MR. SLATER: Ready.

24 CHAIRPERSON BAGGETT: Rebuttal.

25 MR. SLATER: Well, actually, no. I

1 think we'd like to start with -- to build on some  
2 of the things that David mentioned.

3 QSA was not an easy endeavor. And  
4 thanks to the efforts of the people in this room  
5 and elsewhere throughout California, actually the  
6 west, even in Washington, D.C., we were able to  
7 implement --

8 BOARD MEMBER KATZ: We're missing  
9 Bennett.

10 MR. SLATER: Where is Bennett; he's in  
11 Colorado.

12 BOARD MEMBER KATZ: Where's Bennett when  
13 we need him.

14 MR. SLATER: We were able to complete  
15 and actually move forward on an historic  
16 undertaking. And IID has been a valued partner  
17 and important key participant in the process. So  
18 we want to reaffirm our continuing respect for our  
19 partner and desire that we keep moving forward on  
20 a constructive basis.

21 Why we are here, in reading the order,  
22 or the workshop, recalling the order, there was a  
23 provision where the State Board continued its  
24 jurisdiction on the basis of potential  
25 socioeconomic impacts.

1                   Now you found at the time that the  
2                   benefits of the transfer outweighed what those  
3                   impacts were. But you acknowledged the existence  
4                   of a state law that was designed to put in place a  
5                   cooperation, if you will, a cooperation,  
6                   assistance and evaluation from the State of  
7                   California, that the parties should be mindful of.

8                   From the date that that original  
9                   language showed up in the order, a contract  
10                  amendment was developed which was consistent with  
11                  that order. That contract amendment effectively  
12                  had, in simplistic terms, six different components  
13                  that relate to this, at least six that I can think  
14                  of that are material.

15                  And I think Mr. Osias pointed out that  
16                  neither San Diego nor IID ever wanted water by  
17                  fallowing. The San Diegans, from at least the  
18                  time that I became involved with them, in 1996,  
19                  had expressed a strong desire to make investments,  
20                  or to allow IID and its farmers to make  
21                  investments in efficiency-based conservation. For  
22                  the simple reason that we didn't want to bring  
23                  about community opposition to what we were doing.  
24                  We wanted to have positive economic stimuli  
25                  occurring within the Imperial Valley.



1           It was only after facing the Hobson's  
2           Choice of not having a transfer or creating water  
3           by fallowing that we chose to proceed with the QSA  
4           on a short-term horizon. And we felt it was  
5           necessary to conclude.

6           But we didn't just get there overnight.  
7           There were contractual commitments that were put  
8           in place. And those contractual commitments first  
9           included a ongoing respect for IID's  
10          administration of its own affairs in the Imperial  
11          Valley.

12          Under the original construction of the  
13          transfer agreement San Diego secured a covenant  
14          from IID that it would generate water through  
15          efficiency-based conservation, and not by  
16          fallowing. So IID was actually prohibited from  
17          making water available for San Diego by fallowing  
18          for the duration of the initial term.

19          That had to be lifted out of the  
20          agreement, or at least relieved for a period of  
21          years. And, in fact, the fourth amendment or the  
22          revised fourth amendment does that.

23          So, before the parties were willing to  
24          do that, San Diego wanted to again respect IID,  
25          but at the same time we needed to have a

1       commitment from IID that it would carry out a  
2       fallowing program in a way that was designed to  
3       minimize socioeconomic impacts.

4               So we received that commitment in the  
5       form of a best-efforts commitment on the part of  
6       IID to administer a fallowing program which was  
7       designed to minimize socioeconomic impacts in the  
8       Imperial Valley.

9               So, from a contractual standpoint, again  
10       we didn't want to be involved in the business or  
11       the affairs of the Imperial Valley. We trusted  
12       our partner, and we said we'll take from you a  
13       contractual commitment, which in our mind is very  
14       meaningful. In our mind it's a very high standard  
15       of care that IID offered to us, a best-efforts  
16       covenant to implement a fallowing program that  
17       would minimize socioeconomic impacts.

18               Secondly, there was a willingness on  
19       IID's part, and a willingness on San Diego's part,  
20       to, through a contribution and advancing of funds,  
21       set aside \$20 million that would be made available  
22       for the purpose of taking what I'll call proactive  
23       measures or mitigation measures to minimize the  
24       economic consequences to the extent that there  
25       were any.

1           So, first of all, covenant, do the best  
2           you can to minimize. To the extent that there  
3           still are some that occur, there's \$20 million  
4           available.

5           There was, I think, as the Board Members  
6           who were here in the 2000 hearing will recall, a  
7           wide divergence in terms of expectations of what  
8           might result from the fallowing. And, indeed, as  
9           you could expect, San Diego and IID were never  
10          really able to agree on a projection of what those  
11          damages were, but we thought those first two  
12          elements were material. Again, best efforts plus  
13          20 million. And then we set about a method to  
14          examine or measure what those impacts would be.

15          I think there was a question of Mr.  
16          Osias regarding the measurement criteria. And  
17          you'll actually find that as a part of our exhibit  
18          5, and it's an appendix to the second annual  
19          economist report, the guidelines for what the  
20          economists were supposed to measure, is in that  
21          exhibit.

22          Now, the economist panel, in theory, was  
23          set up to measure impacts. We did the very best  
24          we could at trying to describe what we thought  
25          those impacts might be. Board Member Katz asked

1        what was the definition. I believe that the  
2        definition that's offered that's relevant is on  
3        page 46 of our exhibit, Arabic 2A:

4                Third party impacts are defined as, 1)  
5        changes in the after-tax income of individuals;  
6        essentially those not participating in the  
7        program. And 2) changes in the tax receipts of  
8        local government.

9                So, the desire was to measure what was  
10        happening in reality. Now, we didn't want to just  
11        do an academic exercise where we were measuring  
12        impacts that had no relevance to things that were  
13        happening on the ground.

14                But I do think there was an  
15        acknowledgement, and Mr. Osias mentioned this,  
16        that we were looking or taking a more cumulative  
17        view. That there might indeed be winners and  
18        losers. That a individual who might benefit, or  
19        the community might benefit as a whole, where  
20        there were individual losers within the process.

21                So the John Deere Company might suffer  
22        some impacts related to their operation. But,  
23        indeed, those might be offset by other advantages  
24        from the transfer.

25                We also had to come up with a process to

1 distribute the money. Remember the Authority  
2 doesn't want anything to do with those internal  
3 Imperial County decisions about how to best  
4 mitigate. We want there to be a success, hence  
5 the covenant from IID regarding the implementation  
6 of its program.

7 We wanted to have an independent agency  
8 which would be responsible for making the value  
9 decisions about where the money ought to go. So  
10 we set up what we thought would be an independent  
11 local entity, which was element 4.

12 Element 5 in our mind was, well, that is  
13 a purely local approach. But as we wound down on  
14 the clock in 2002 and we were unable to come up  
15 with a broad support to move forward on the QSA,  
16 and as we moved through the Herculean efforts of  
17 2003 to come to a closure, we had a lot of  
18 assistance and cooperation from the State of  
19 California in terms of ideas, constructive  
20 feedback on economic incentives, investments in  
21 the Imperial Valley that might bear fruit, if you  
22 will.

23 And we found some solace in the  
24 legislation that was adopted contemporaneous with  
25 the execution of the QSA. That would be SB-277,

1       which was essentially a reiteration of the former  
2       Kuhl bill that had been adopted in 2002.

3               So we had an expectation, in fact the  
4       contract, itself, describes that. There would be  
5       a coordination between what was happening on the  
6       local level with the State of California to try to  
7       develop programs and potentially approaches that  
8       would serve to minimize socioeconomic impacts to  
9       the extent that there were any.

10              And then ultimately San Diego felt as if  
11       all those other things, all those other boxes were  
12       checked, and we moved down the process, that under  
13       those circumstances San Diego would be willing to  
14       step up and say if there were impacts that weren't  
15       addressed through compliance with the contract and  
16       all those other provisions, that we would be  
17       responsible for payment to mitigate those impacts.  
18       Which is sort of the ultimate insurance policy if  
19       everything else goes wrong.

20              So, while on one hand we have no  
21       interest in involving ourselves directly in the  
22       affairs of what happens in Imperial, you can  
23       imagine the people in San Diego become nervous to  
24       the extent that things do not appear, in a broader  
25       community setting, to be going well in terms of

1 public perception.

2           And we're not deaf, we're not blind, and  
3 we do read our mail. And we read newspaper  
4 reports when people indicate that they have  
5 dissatisfaction with the independent economist  
6 panel report and the findings. And that the real  
7 life experience on the ground is that some people  
8 are being hurt.

9           Regardless of whether there's an overall  
10 benefit to the broader community, there's a  
11 perception, at least among some, that there is  
12 uncompensated harm.

13           In the big picture there are contract  
14 arguments to be had that can be pushed back and  
15 forth in both directions. And although we're not  
16 here to vouch for the economist panel report, the  
17 report speaks for itself. It was prepared by an  
18 independent set of economists, not San Diegans.

19           And so we have -- we're not here today  
20 to speak in favor of it. We only included what it  
21 says. We do know that there is dissatisfaction.  
22 And to the extent that there is dissatisfaction,  
23 we think that's a bad thing.

24           In our view the continued implementation  
25 of the quantification settlement agreement

1 requires people to continue to push in the right  
2 directions to get things done. We still have a  
3 canal lining to implement. We have milestones  
4 ahead of us. It's not only the economy of San  
5 Diego and Imperial that depend upon the completion  
6 of this transfer, it's the needs of California as  
7 a whole.

8 So, where we see ourselves now is sort  
9 of this contractual pathway which is informal  
10 dispute resolution, followed by dispute resolution  
11 if we can't come to an agreement. I think we are  
12 cautiously optimistic with IID that we'll get  
13 through that process. We view it to be of  
14 critical important that we do.

15 We don't really want to see ourselves go  
16 to arbitration. We're mindful of the fact that  
17 people in this room are suing to enjoin the  
18 transfer. And so, in our mind, it's important to  
19 come up with a consensual contractual basis to  
20 address the problems.

21 If I could finish with one contract  
22 divergence that explains, at least I think  
23 addresses, some of the comments or questions that  
24 Director Board Member Katz was suggesting.

25 I think at the core there's a view in



1 San Diego that money is paid to IID for  
2 performance in a certain way. It's not just  
3 leaving water at the river. It's leaving water at  
4 the river by carrying out certain actions that  
5 for, under the original arrangement it was water  
6 created by efficiency. And under the new  
7 arrangement it's water created by fallowing and  
8 then efficiency.

9 And in accordance with the defined  
10 schedule there's so much water that's supposed to  
11 be made available on a give time -- at a given  
12 schedule, given time. And there's a divergence,  
13 perhaps, in whether you measure the money that's  
14 transmitted by San Diego to IID, whereupon it goes  
15 into the IID coffers, and then as a way-station,  
16 it goes to individual farmers or something else  
17 happens to it.

18 And a more narrow view would be that the  
19 money doesn't count immediately upon its receipt  
20 by IID. It has to follow a pathway to be counted.  
21 And it would have to -- the money would then have  
22 to be transmitted to the farmers. And if it was  
23 transmitted to the farmers, then you would apply  
24 what's called the leakage test to see what they  
25 did with the money and whether then there were

1 associated benefits.

2 Or, as another example, there would be  
3 something else as a triggering event that would  
4 cause it to be counted.

5 And I think the San Diego view, more or  
6 less, to be influenced by our partners and further  
7 discussions, but how it sits presently is we look  
8 at it more as a gross sum. We leave you the  
9 dollars; you're responsible for administering your  
10 programs; you decide internally how you want to  
11 address that. And it's not wise public policy for  
12 us to engage in a second-guessing of that effort.

13 So, with that, I think we're happy to  
14 respond to any questions you have. And hopefully  
15 we have someone in the room that can do it.

16 CHAIRPERSON BAGGETT: Questions?

17 Richard.

18 BOARD MEMBER KATZ: I'll come back after  
19 we --

20 CHAIRPERSON BAGGETT: Okay. Thank you.

21 Supervisor Grogan.

22 Just quickly, well, we can just keep  
23 going. I was thinking whether we should take a  
24 break, but I think we don't have that many more  
25 cards. You're up.

1           SUPERVISOR GROGAN: All right, thank  
2 you. First of all I'd like to introduce myself.  
3 I'm Larry Grogan, Supervisor for District 2,  
4 Imperial County. And thank you for the  
5 opportunity to address the Board.

6           To begin with I'd like to just tell you  
7 that I've got about 30 years experience of energy  
8 development at the Salton Sea. We conducted  
9 numerous environmental and water studies for the  
10 various companies that I worked for.

11           I have served as Mayor and Councilman of  
12 the City of El Centro, and served on the local  
13 entity. I currently serve, one of my positions,  
14 with the Salton Sea Authority, developing, with  
15 the Department of Water Resources, a plan for the  
16 Salton Sea.

17           The reason I say that I, I didn't you to  
18 think of me as a pretty face.

19           The County of Imperial appreciates the  
20 State Board's decision to hold the workshop on  
21 socioeconomic impacts associated with the IID/San  
22 Diego County Water Authority long-term water  
23 transfer. And on the implementation of the  
24 desalinization in San Diego water service area.

25           The County presented both these issues

1 to the State Board hearing at the State Board's  
2 2002 proceedings that led to the adoption of the  
3 State Board order initially approving the  
4 transfer. And the County believes that both  
5 issues merit the State Board's continuing  
6 attention.

7 We look forward to a hearing from the  
8 San Diego's report on desalinization; and we have  
9 been encouraged by periodic public reports and the  
10 efforts by San Diego Metropolitan Water District  
11 to achieve greater permanent water self-  
12 sufficiency through this technology.

13 The remainder of my statement will  
14 address the subject of socioeconomic impacts. To  
15 summarize the County's present position, honest  
16 determination and reimbursement of third-party  
17 socioeconomic impacts remains an unresolved and  
18 highly contentious question in the Imperial  
19 Valley.

20 And we are concerned that San Diego has  
21 been unwilling to acknowledge the actual cost and  
22 impacts of the transfer.

23 Prior to and following this Board's  
24 order on the transfer, and prior to and following  
25 the final approval of the QSA and related

1       agreements on October 2003 the County attempted to  
2       secure assurances that it and its residents would  
3       be protected from the transfer's third-party  
4       impacts.

5               We sought this assurance by  
6       participation in the final IID/San Diego County  
7       Water Authority transfer orders of this Board, and  
8       the parallel 2002 legislation SB-482. And less  
9       successfully in the attempt to participate in the  
10      formation and subsequent modification of the final  
11      QSA package. That, in the end, we have not been  
12      successful is, in our view, principally attributed  
13      to the stubbornness of all the QSA water districts  
14      who refuse to recognize the County as an equal  
15      entity worthy of dealing with them.

16              As a consequence, we have been forced to  
17      challenge the QSA and transfer a litigation now  
18      pending before the Superior Court of Appeals,  
19      Sacramento Court of Appeals, and the Sacramento  
20      Superior Court. Thus, because of their resistance  
21      to our participation by the QSA parties,  
22      themselves, the work is not final and remains  
23      subject to judicial correction or disapproval.

24              I will shortly outline our outstanding  
25      concerns and urge the State Board to inquire

1 further what it can do to resolve them. Before  
2 that, however, let me offer the best statement we  
3 can make at this time about actual third party  
4 impacts suffered to date in or by the County.

5 In preparation for this hearing we asked  
6 state and local offices, such as the California  
7 EDD and the County Agricultural Commissioner, to  
8 provide data from which we could quantify  
9 experienced third-party impacts.

10 The answers have suggested, but not  
11 definitely established, economic losses attributed  
12 to the fallowing. The best response we can  
13 provide to your Board today is that it is too  
14 early in the transfer to determine a credible  
15 empirical result of the water transfer impacts.  
16 And we need more data, a better set of criteria by  
17 which to judge, and the best and most  
18 disinterested professional assistance our state  
19 can provide to credibly assess the QSA's third-  
20 party impacts.

21 The lack of disclosable empirical data  
22 suggests that other estimates your Board make here  
23 today should be taken with a grain of salt. All  
24 of these estimates are based on the very limited  
25 information and rely primarily on predictive

1 models which all of us know are only as good as  
2 the assumption built into them and the rigor of  
3 the calculations.

4 CHAIRPERSON BAGGETT: So basically, I  
5 guess, you know, we got your statement.

6 SUPERVISOR GROGAN: Okay.

7 CHAIRPERSON BAGGETT: And have already  
8 read it. But it seems like basically you're  
9 arguing that we should wait a few more months, get  
10 some more information? It's too early in the  
11 process to make any determination?

12 SUPERVISOR GROGAN: I'm saying that the  
13 data that we have seen so far from the studies  
14 that we have seen is basically all over. Now,  
15 you've heard the difference --

16 CHAIRPERSON BAGGETT: I've gathered that  
17 from the two parties that preceded you that  
18 there's some -- it's all over disagreement. So  
19 what do you suggest we do, I guess, is the  
20 question. It sounds like wait till we get more  
21 data; wait till we get more information?

22 SUPERVISOR GROGAN: I think what IID has  
23 suggested is, first of all, starting with the  
24 solid figures that they are projecting as far as  
25 the water. And the other economic impacts that

1       they have said.

2                   But I wanted to go on for just a moment  
3       on that, we're getting into the third-party  
4       impacts, and talk about what the loss of income  
5       to --

6                   CHAIRPERSON BAGGETT:   Okay.

7                   SUPERVISOR GROGAN:   -- let me pick up  
8       with the -- that the results of the data show the  
9       unreality that surrounds the assessment,  
10      principally asserted by San Diego, and the  
11      fallowing project exactly a net benefit to  
12      Imperial County and the Imperial Valley.

13                  As the County consistently advocates,  
14      third-party impacts must include not just the lost  
15      income to individuals, but also lost income to all  
16      people and businesses that do business in Imperial  
17      County.  Third-party impacts must include  
18      increased costs imposed on the County and other  
19      governments, just not the decrease of taxes that  
20      they suffer.

21                  It is irrational, for example, to  
22      pretend to compensate a third party impact while  
23      categorically excluding all impacts on all who do  
24      business in our County.  Confining the impacts to  
25      what the fourth amendment, to what the transfer



1 agreement labels as residents, excludes economic  
2 losses to many people who work in our County and  
3 whose earnings contribute to our overall economy.

4 A classic example, and this comes to Mr.  
5 Katz, is the workers from Mexico legally employed  
6 in Imperial County, the economists point out that  
7 7 percent of our County residents work elsewhere.  
8 And that 7 percent of the Mexicali residents  
9 working in the United States, mainly, of course,  
10 in Imperial County. But 7 percent of our  
11 residents whose earnings are not affected amount  
12 by following amount to 11,000 people, 7 percent of  
13 Mexicali's residents whose earnings are affected  
14 by following amount to 42,000.

15 So, people working in Imperial County  
16 unaccounted by degree imposed on the IID/San Diego  
17 County Water Authority first amendment, the  
18 smaller but not insignificant scale. Let me note  
19 that many of our own County employees are not  
20 residents of the County, so that their loss, that  
21 losses to their income occasioned by the transfer  
22 would not similarly escape a County.

23 I wanted to drop down to fairness. It's  
24 also that we talked about the following program  
25 cannot -- skip ahead to the following program

1 cannot be credited with the building boom, which  
2 is we're now experiencing in Imperial County.

3 Adverse impacts of fallowing should not  
4 be masked by the overall statistics of  
5 unemployment rates. Without fallowing, our  
6 unemployment would be significantly lower, not  
7 remaining essentially constant. Because farm and  
8 construction jobs both would exist.

9 What we have seen is that some of the  
10 farm laborers have moved into construction. So  
11 basically we are still a farm nexus, or loss, but  
12 it is made up basically by the increase over here  
13 in construction jobs. But that doesn't mean it  
14 still hasn't been a loss on the agricultural side.

15 CHAIRPERSON BAGGETT: That's happening  
16 throughout California, so -- not just Imperial  
17 County.

18 SUPERVISOR GROGAN: It also comes back  
19 to, though, the question of fallowing, because  
20 there's just not the crops there.

21 So, I'll cut my testimony short because  
22 you do have copies of it. If there's any  
23 questions, I do travel with two attorneys who keep  
24 me -- one, because of litigation, because I have a  
25 tendency -- the other because I have a tendency to

1 say what I think. And I also have a government  
2 affairs individual to soothe hurt feelings  
3 afterwards.

4 (Laughter.)

5 SUPERVISOR GROGAN: So if there's  
6 anything we can help you with, let us know.

7 CHAIRPERSON BAGGETT: No, I think this  
8 is helpful, your written comments.

9 Mr. Rossman, do you have any --

10 MR. ROSSMAN: Good afternoon, Mr.  
11 Chairman and Members of the Board. It's good to  
12 be back. And let me just briefly try to respond  
13 to Chairman Baggett's question.

14 I had a great contracts professor as my  
15 first year of law school who asked us to focus on  
16 the remedy first before we got to the rules of  
17 contract.

18 And on this one I think --

19 CHAIRPERSON BAGGETT: Wise professor.

20 MR. ROSSMAN: I think that San Diego, I  
21 mean we appreciate, first of all, as I've  
22 expressed to them, their sharing their comments  
23 with us yesterday. And I'm sorry that we couldn't  
24 get ours to you in written form until today.

25 But there is an agreement, I think,

1       between San Diego and us, and that is that we all  
2       ought to unite behind getting the requisite  
3       appropriations into the hands of the state  
4       government to do the assessment that Senate Bill  
5       277 called for.

6                Because the structure of what we have  
7       now is, as San Diego commendably recognized, is  
8       not working. And it's not working because it's,  
9       you know, I think fundamentally because of the  
10      structure.

11              Local entity is somewhat of a misnomer.  
12      When it's work is governed, if you will, by  
13      economists, one of whom is selected by San Diego,  
14      to the effect that the second report, the 2005  
15      report you have now, is essentially San Diego's  
16      perspective.

17              And so --

18              BOARD MEMBER KATZ: Mr. Rossman, let me  
19      interrupt you for one quick second.

20              MR. ROSSMAN: Yes.

21              BOARD MEMBER KATZ: We invited the  
22      Department of Food and Ag. Did anyone from the  
23      Department of Food and Ag bother to show us the  
24      courtesy of showing up or contacting us?

25              MS. CANTU: I don't see them in the

1 audience.

2 BOARD MEMBER KATZ: Okay, because just  
3 to your point, I mean I know there's some  
4 discussion about what was the intention, was the  
5 funds available, and such. And I'm curious as to  
6 whether the department ever went after the money  
7 that was implied in the legislation, as well.

8 And I haven't been able to find any  
9 evidence that they have. But I also think it's  
10 pretty piss-poor of them not to show up to discuss  
11 it. So -- but I'm sorry to interrupt, but you  
12 just had mentioned that, so.

13 MR. ROSSMAN: Well, no, I appreciate  
14 that. And, you know, to just measure and note our  
15 own performance, perhaps we should have been more  
16 vigorous in seeking these funds from the  
17 Administration. And we appreciate your taking the  
18 initiative to put this back on, if you will, the  
19 front burner.

20 Now, this Board could, of course, decide  
21 to exercise its reserve jurisdiction and reopen  
22 this question, itself. We will agree with San  
23 Diego that although we were not really allowed to  
24 participate in the formation of that 2003  
25 legislation, the one thing that Mr. Ham was able

1 to do, as a miracle worker, on six-hours notice,  
2 was at least insure that local Imperial County  
3 governments would participate with the Department  
4 of Food and Agriculture and the Resources Agency  
5 in doing that assessment.

6 BOARD MEMBER KATZ: Well, Mr. Ham is  
7 tenacious and a pain sometimes, but he raised some  
8 important points. But I do remember, and I know  
9 you'll correct me if I'm wrong, Imperial County  
10 being in favor of the legislation when it passed  
11 at the end. I believe Mr. Ham took a position on  
12 behalf of the County in support.

13 MR. ROSSMAN: We thought the legislation  
14 was better than not have it, yes, sir.

15 BOARD MEMBER KATZ: Okay. And I'm  
16 pretty confident that the previous Administration  
17 would have included funding for this in the 3/4  
18 budget, but we didn't get that chance.

19 MR. ROSSMAN: Well, maybe we should all  
20 work together and perhaps one action that this  
21 Board can take that would be relatively finite  
22 would be to memorialize the Legislature and the  
23 Administration to do that. And the rest of us  
24 here could get behind that.

25 Because, I think, coming from you it

1 would be more credible than from us. But we need  
2 this. Because the local --

3 BOARD MEMBER KATZ: You're the only one  
4 that thinks that.

5 (Laughter.)

6 MR. ROSSMAN: -- sure that's the case.

7 BOARD MEMBER KATZ: I'm pretty sure  
8 that's the only --

9 (Laughter.)

10 MR. ROSSMAN: Well, sir, it's --

11 CHAIRPERSON BAGGETT: IID --

12 BOARD MEMBER KATZ: Mr. Rossman, thank  
13 you for your optimistic view of our relationship  
14 with the folks across the street.

15 (Laughter.)

16 MR. ROSSMAN: Well, you did it once,  
17 sir. I thought you could do it again.

18 BOARD MEMBER KATZ: I appreciate that.

19 (Laughter.)

20 MR. ROSSMAN: But, you know, there is a  
21 problem here. And Imperial County, which is, you  
22 know, I don't want to sing an old song here, you  
23 know, that we've recited this before. We're the  
24 ones who are largely left to pick up the pieces.

25 We're going to have a lot of increased

1 County expenses dealing with this, just in the  
2 administration of air quality impacts, aside from  
3 the mitigation measures, themselves, are going to  
4 be the expenses of the Administration. And those  
5 aren't covered presently. And we begged San Diego  
6 and IID --

7 CHAIRPERSON BAGGETT: But as I recall,  
8 we made it real clear that it was up -- the local  
9 air agencies have plenty of authority, legal  
10 authority to require mitigations, to require  
11 compensation. And we felt it clearly wasn't our  
12 role, is not the air agency, but to, I think we  
13 put it, I don't know how clearer we could have  
14 been in the order.

15 MR. ROSSMAN: We appreciate that, but if  
16 there's a promise that third-party impacts are  
17 going to be mitigated, one of those impacts that  
18 the County is going to face is the expense of  
19 setting up that type of mitigation program.

20 And in our view that should have been a  
21 covered third-party impact. And San Diego and IID  
22 steadfastly refused our pleas, both before we  
23 filed the litigation and afterwards, to make what  
24 we thought were not significant changes from their  
25 point of view in the formula that governs.



1           And please keep in mind that the formula  
2           that governs the operation of the local entity,  
3           the document from which Mr. Slater just read a few  
4           moments ago, was not drafted with Imperial  
5           County's participation. It was drafted by the two  
6           water districts.

7           And I can only say that we have tried  
8           very hard to get these changes that have to be  
9           made in this formulation.

10           Perhaps the most telling thing is  
11           dealing with the impacts of Mexican workers in  
12           Imperial County. They have steadfastly refused to  
13           get rid of that word resident, as if somehow we  
14           were dealing with an exercise in citizenship  
15           rather than economic impact.

16           And yet the reports that the economists  
17           have produced twice now, have said, well, we  
18           include Mexican workers because we haven't found a  
19           way to separate them out from the calculus.

20           Now, if that's so, why the resistance?  
21           That is why, someone aside from these two parties,  
22           these three parties, have to assess what the true  
23           socioeconomic impact is. Or answer the question  
24           from the Duchenev legislation, what more must be  
25           done to insure that these impacts are adequate.

1                   So, I guess our first choice, to answer  
2                   your question, Mr. Chairman, about what the Board  
3                   should do, would be to see if we can't get that  
4                   state work done. And if it can't be done by the  
5                   State Board -- by the Food and Agriculture, as the  
6                   Legislature has commanded, then we can try to do  
7                   it here.

8                   I mean, as the Board commendably  
9                   recognized, socioeconomic impact is one of the  
10                  criteria by which it conditionally approved this  
11                  transfer. And we'd rather work it out here than  
12                  in other arenas.

13                  Really, that's all I wanted to say,  
14                  aside to make myself available to answer any  
15                  questions. In fairness to Supervisor Grogan, he  
16                  hasn't been involved in a lot of the technical  
17                  details here, as much as I guess I'm the sort of  
18                  senior person from the County here on this.

19                  BOARD MEMBER KATZ: That explains why  
20                  he's smiling still.

21                  (Laughter.)

22                  MR. ROSSMAN: But we're the ones who are  
23                  going to have to pick up the pieces. And I know  
24                  people will say, well, we were allowed to  
25                  participate in a limited way, and we were, in a

1 limited way, to formulating some of this.

2 But there's one thing to be invited into  
3 a meeting and given a half an hour to make your  
4 comments on a draft. And it's another thing to  
5 sit at the table, being respected by the other  
6 Districts, as an equal partner in an enterprise.

7 And, yes, we're trying to pick up the  
8 pieces and go back and get that done again.

9 And just to close, Mr. Slater said that  
10 there are people in this room who have sued to set  
11 aside the transfer. The County of Imperial has  
12 made it very clear, I think, to this Board, and  
13 certainly to the Superior Court and to the Court  
14 of Appeal, that our remedy is not favored to set  
15 aside this transfer, but to secure its  
16 modification to cure, just on the socioeconomic  
17 side, these very issues.

18 CHAIRPERSON BAGGETT: Any other  
19 questions?

20 MR. ROSSMAN: And we will, within 30  
21 days, we will serve on everyone the comments we  
22 delivered today; and then within 30 days we will  
23 respond to what we have seen today.

24 CHAIRPERSON BAGGETT: Yeah, if you  
25 could, send us your suggested remedies. That

1 would be helpful.

2 MR. ROSSMAN: Thank you, sir

3 BOARD MEMBER KATZ: Tam may have a  
4 question.

5 BOARD MEMBER DODUC: Commissioner, I  
6 have a suggestion. With respect to your comment  
7 regarding the Department of Food and Ag, and of  
8 course, Richard's comments, too, I see that we  
9 have in our audience our Agricultural liaison, Mr.  
10 Danny Merkley. I'd like to ask him to contact the  
11 Department of Food and Ag, and since the record is  
12 open for 30 days, perhaps get a response from  
13 them.

14 MR. ROSSMAN: That would be nice if I  
15 can help formulate that question.

16 CHAIRPERSON BAGGETT: And I think --

17 MR. ROSSMAN: What does it take to do  
18 this work, and I'll agree with that.

19 CHAIRPERSON BAGGETT: That would be  
20 appreciated, if you could write those comments to  
21 us then we can follow up with our sister agency.

22 MR. ROSSMAN: Thank you.

23 CHAIRPERSON BAGGETT: Okay. Got two if  
24 necessary and one, is it Mr. Hanks? And then  
25 Nicole, it says if necessary. And Bill.

1                   You're the one that says necessary, so  
2                   you're up, Mr. Hanks. The other two can  
3                   contemplate whether they have comments to make or  
4                   not.

5                   MR. HANKS: I wish to thank you people  
6                   for allowing us to come before you. I'm Orbie  
7                   Hanks; I live in Brawley, California. My family  
8                   has been engaged in Farm Service Providers, we  
9                   call ourselves, combine, bailers, et cetera,  
10                  enlisting tractor work, et cetera. There's about  
11                  maybe 100 or so of us that are in that position.

12                  And Imperial Valley, I guess, is  
13                  different in many respects from other places, each  
14                  community has some idiosyncrasies.

15                  In our Valley since the 160-limitation  
16                  was settled, the size of farms grew and  
17                  proliferated considerably. Those of us that  
18                  couldn't keep up fell back with what we had, and  
19                  that was pieces of equipment, and started business  
20                  servicing the farmers so they had better cash flow  
21                  and didn't have to have all their money tied up in  
22                  combined, D8s, bailers, et cetera.

23                  And when this thing came up several of  
24                  us were interested in it and we asked some of our  
25                  people on the IID Board in the areas where they

1 lived, if we would have a say. And they said,  
2 sure, your time will come, but first we need to  
3 get this thing resolved with the growers and with  
4 San Diego. But there will be a position for you  
5 people to be heard.

6 And that was in the revised fourth  
7 amendment QSA. Which provided for third-party  
8 impacts. And in reading that, after the local  
9 entity was formed and it was sort of formed real  
10 quick like. Several of us weren't aware of it.  
11 When you're busy working on the farm and trying to  
12 get up every morning and kick the wolf off the  
13 doorstep and go out and spend 12, 15 hours a day,  
14 and then come back in, you don't have time to feel  
15 like reading the paper.

16 And I guess there was little bitty ads  
17 in the corner of the paper. Some of us missed it.

18 But when we discovered what it was and  
19 what the entity was trying to do, we realized that  
20 in reading the fourth amendment, for at least 15  
21 times or more, in article 14.5 that stated that  
22 there would be mitigation or some kind of help  
23 provided to those people who were directly  
24 impacted.

25 And we felt for sure that we were

1 directly impacted because we were the working on  
2 the ground, for the farmer, whenever the acres  
3 were cut, then our income was cut, because we did  
4 not have those acres to service for the farmers  
5 and the growers.

6 And we, as a group, farmed sometime in  
7 the first part of '04, and we were told no, we  
8 were such an insignificant, small group that we  
9 did not even need to waste their time. To go away  
10 and mind our own business.

11 Well, whenever you live in a certain  
12 area and the north end of the County was impacted  
13 stronger than the rest of the area, because of the  
14 crops that were grown there. And the IID had  
15 become a property owner and a lot of that property  
16 was in the north end.

17 So the impact upon our group was  
18 extremely volatile and in the loss of acreage. We  
19 didn't lose the water, but we lost the work. And  
20 in trying to influence the local entity to let us  
21 apply as farm service providers, we were turned  
22 down.

23 The presentation that you heard from San  
24 Diego and a little bit from the IID, was to jump-  
25 start proactive with the moneys that were coming

1 in, and that would start new businesses.

2 For example, if we would forsake our  
3 farm service operation and start a trucking  
4 business or something like that, hauling cement or  
5 whatever, we were eligible not for a loan, but for  
6 a grant. And that's ludicrous to say that you got  
7 a successful company over here that's being  
8 financially impacted, that you cannot get any  
9 help, but you can desert that, desert your  
10 customers, those that you have left, and then  
11 possibly be forced into bankruptcy because John  
12 Deere Company, they're going to want that  
13 equipment back and we're still going to have to  
14 pay for it.

15 To go out and start a new business that  
16 would be unproven and not farm related, which we  
17 have the experience in, was just simply beyond our  
18 comprehension. So therefore, we started our  
19 campaign. And when I say we, I was kind of led  
20 the charge. I guess because when you get a  
21 certain age you lose a little bit of your senses  
22 and whatever, and I figured the worst thing that  
23 could happen to me is somebody catch me, chew me  
24 up, but they'd be sure to spit me out because they  
25 sure wouldn't like the taste of what they got.



1           But, anyway, we found that the Farm  
2 Bureau was interested in what we were saying,  
3 because these people recognize what the impact was  
4 going to be on us. If you're farming 5000 acres  
5 you don't want a combine or a D8 at your disposal  
6 and only use it one month out of the year and it's  
7 sitting there. Let somebody else do that, and  
8 then you have enough people filling those spaces  
9 and those positions, then the farm industry can go  
10 ahead and prosper.

11           So we were in the position to what it  
12 felt like that us old hillbilly people realized a  
13 long time ago, if your neighbor's a farmer and you  
14 don't like him, and you haven't got guts enough to  
15 stand up to him, cripple his horse. And then  
16 you've got him.

17           Well, that was kind of the way we felt,  
18 that we were being crippled. And the farm  
19 community was being punished through us. But  
20 maybe that's the overactive imagination of an old  
21 country boy.

22           And then the existing module is now  
23 before the local entity is that you can receive a  
24 grant, and there's several of them from 50,000 on  
25 up to 250,000. And we've been able to kind of get

1 solid, wait for the economists to come back.

2 And speaking of those economists, the  
3 three people that were there, they were given  
4 information about fallowing. But it came from the  
5 State of Arizona. They neglected the County of  
6 Imperial and the University of California's  
7 reports on how the farm operation worked there.

8 That's why those reports were coming  
9 back as being flawed. They were using an area  
10 where they were fallowing due to drought, et  
11 cetera.

12 We're in a position down in Imperial  
13 County to where we are being in a fallowing mode,  
14 and the farm ground is being fallowed, and I don't  
15 think that's happening anywhere else in the United  
16 States, where they're fallowing water to send it  
17 to the city.

18 And people need water and priorities.  
19 And the \$20 million; we had some people on the  
20 local entity that were kind of wild cowboys, and  
21 they started doing some negotiating on their own.  
22 And the best I could find out they were told no,  
23 that the Authority would not support that kind of  
24 a mitigation program because it did not apply to  
25 the agreement they signed.

1                   However, reports have come back, and I  
2                   don't think there's been any kind of a  
3                   negotiation, and the fourth amendment calls for  
4                   that. I will say this, that San Diego people that  
5                   are in the know said they would live up to the  
6                   agreement, and to the QSA.

7                   And we're kind of hanging our hat on  
8                   that agreement being followed. And the IID  
9                   hopefully will step in and take the lead with the  
10                  local entity which has created these people.

11                  And basically that's where we are.  
12                  Those of us that are on the firing line, we know  
13                  we're being impacted. We can prove it. I can  
14                  show you here from land that has been fallowed,  
15                  the growers have recognized that it's fallowed,  
16                  given us their permission to publish this thing.

17                  And we have asked for some kind of help,  
18                  not 100 percent remuneration, compensation,  
19                  mitigation, whatever term you wish to use. But we  
20                  would like to have some consideration that  
21                  hopefully could be worked out. And if San Diego  
22                  would agree to this, and they get the economists  
23                  on the right track, it would certainly help to  
24                  keep us alive and functioning for the first 15  
25                  years.

1           And IID has gotten a black eye saying  
2           they're getting all the money. Well, when they  
3           started in there was no fallowing, no foul/no  
4           harm. And then in '03 all the other things came  
5           up, and I'll say this much for the IID: They have  
6           done the dead-level best to keep up with all the  
7           things that are happening, trying to get it into a  
8           place to where they can break out of the fallowing  
9           mode in the next 15 years.

10           And if they do that, and you lose your  
11           farm service providers, we may as well go ahead  
12           and stay with fallowing because financially we're  
13           not going to be able to go back to farming.

14           CHAIRPERSON BAGGETT: If you can provide  
15           us some of that information it would probably be  
16           helpful in any work with the Farm Bureau to --

17           MR. HANKS: We will do so. And I would  
18           appreciate it if you would let Nicole have a word.

19           CHAIRPERSON BAGGETT: She's up next.

20           MR. HANKS: We do thank you for  
21           listening to us insignificants.

22           CHAIRPERSON BAGGETT: Okay. No, you  
23           aren't. We spend a lot of time talking about the  
24           insignificant in this order, and we will continue  
25           to follow up on it.

1                   MS. ROTHFLEISCH: Good afternoon. Well,  
2                   it's nice to see you again so soon. For those of  
3                   you that don't know me, I'm Nicole Rothfleisch  
4                   with the Farm Bureau.

5                   We have been working very closely with  
6                   the local entity over the past nine months or so  
7                   on this issue because it is our constituency that  
8                   we feel is most severely impacted by the  
9                   fallowing.

10                  Farm Bureau supported the water transfer  
11                  from the beginning when it was a conservation-  
12                  based transfer. But the Salton Sea and the  
13                  fallowing and all that, it's just changed  
14                  everything. And it really is impacting the  
15                  Valley.

16                  I agree with what Mr. Osias had to say.  
17                  And our problem is not with the IID, and it's not  
18                  even necessarily with San Diego. But we are one  
19                  of the parties that has made this a contentious  
20                  issue, as some people alluded.

21                  And that is actually because of the  
22                  local entity, and their perception on their job  
23                  and how the socioeconomic impacts should be  
24                  mitigated.

25                  We agree that the economic report is

1 severely flawed. And we support the IID in their  
2 efforts to have Dr. Rodney Smith write a new  
3 report. And we've actually been working with  
4 Rodney to help get him some good information from  
5 the farm side, all of the impacts and what goes  
6 into growing the crops. Because we believe that  
7 the group that has been most severely impacted is  
8 the farm service providers.

9 The farmers are definitely impacted; the  
10 landowners; the rent rates, all of those types of  
11 things are impacts. But the farm service  
12 providers are really impacted in that, like you,  
13 Mr. Katz, were saying, the seed salesman, the  
14 fertilizer salesman, the custom harvesters, the  
15 pest control advisers. There's so many different  
16 inputs that go into growing the crops.

17 And Imperial Valley is somewhat unique  
18 in that we rely more heavily on the farm service  
19 industry than most other areas do. And many of  
20 the farmers don't own their own large equipment  
21 for the harvesting and that sort of thing. So  
22 they depend heavily on the farm service providers.

23 The local entity's current mitigation  
24 plan that has not yet been adopted, but is their  
25 draft plan, is a grant-oriented plan. And we

1 believe that the name that they have come up with  
2 for themselves is flawed from the very beginning.  
3 And that is the Socioeconomic Improvement  
4 Committee.

5 And we don't believe that the QSA calls  
6 for a Socioeconomic Improvement Committee; we  
7 believe that the QSA calls for the local entity to  
8 mitigate the impacts of fallowing. And those do  
9 not necessarily always go hand-in-hand.

10 The grant program that they have come up  
11 with could help a number of different people in  
12 the community, but it doesn't necessarily help  
13 those that are the most impacted by the fallowing.

14 The farm service providers need  
15 assistance to stay in business and get through  
16 this period of fallowing. Like Mr. Osias said,  
17 we're all hoping the fallowing can end as soon as  
18 possible. That the state can come up with a  
19 solution for the Sea, and that we can move on and  
20 get back to producing food and fiber in the  
21 Imperial County, and to conserving water, rather  
22 than fallowing.

23 But these farm service providers need to  
24 remain in business so that when all that land goes  
25 back into production they are still there, and the

1 farmers have someone to go to. But if the only  
2 means of mitigation to them are these grants to  
3 come up with some sort of new side business or  
4 something like that, which would pull them out of  
5 agriculture, then they're not going to be there.  
6 And if they're not there, then that hurts the  
7 farmers, and it starts a whole new cycle of  
8 negative impacts to our community.

9 So, the Farm Bureau has actually come up  
10 with suggestions and a mitigation plan of their  
11 own, trying to help the local entity. Because  
12 many of the members that sit on the local entity  
13 are not familiar with agriculture and don't  
14 understand the needs of agriculture and the way  
15 that they can be mitigated that would be most  
16 helpful to them.

17 So we have come up with a plan that we  
18 believe is very fair. We have used figures from  
19 the Imperial County Cooperative Extension Service  
20 so that everyone is on the same page as far as  
21 rates and everything else, and amounts of money  
22 that they would be out per crop.

23 And we believe that they need to be  
24 directly compensated. Of course, like they  
25 mentioned earlier, this is after taxes. We have



1       come up with a plan that takes into account the  
2       fact that since the work isn't being done there  
3       aren't all of the expenses that go into it. So it  
4       would just be a portion of what they are losing  
5       just to help them stay in business through this  
6       period of fallowing.

7                   And so we have been working diligently  
8       to try to get the local entity to listen to us on  
9       that. They -- some of them are willing to listen,  
10      but most of them aren't. They, like their name  
11      says, they believe they are a socioeconomic  
12      improvement committee for the community.

13                   And I don't want to put words in San  
14      Diego's mouth, but I know if I was in San Diego's  
15      position and I was putting forth all of this  
16      money, I certainly wouldn't want it going towards  
17      just helping the community to develop. I would  
18      want it to go towards what the QSA calls for, and  
19      that's just mitigating the impacts. That's it.

20                   So that's what we're asking for from the  
21      local entity, and that's where we are at with  
22      this.

23                   Mr. Slater said that there is a  
24      perception among some that there is uncompensated  
25      harm. And I would just like to respond to him

1       that it's not just a perception.  It's not a  
2       matter of what some economists may come up with in  
3       a model and put down on paper.  There are real  
4       impacts happening out there.  And I know that  
5       because I work with those people.  I know that  
6       because I'm married to a fertilizer salesman.  And  
7       fields that he was once providing the fertilizer  
8       for are being fallowed now; so that's less money  
9       in his pocket.

10                So there are real impacts happening down  
11       there and this grant program is not going to help  
12       them in any way.

13                I think that that's all I have today.  I  
14       will be submitting more detailed comments in  
15       writing, --

16                CHAIRPERSON BAGGETT:  That would be  
17       helpful.

18                MS. ROTHFLEISCH:  -- but if you have any  
19       questions, I'd be happy to take them.

20                BOARD MEMBER KATZ:  Just one  
21       observation.  I'm sure it was an oversight on your  
22       part, but when you were enumerating all the  
23       affected parties you mentioned everything but  
24       farmworkers.  And I'm sure you meant to include  
25       farmworkers in what you were saying.

1 MS. ROTHFLEISCH: Well, I'll respond to  
2 that. I don't represent the farmworkers, there  
3 is --

4 BOARD MEMBER KATZ: You don't represent  
5 tractor salesmen, either.

6 MS. ROTHFLEISCH: Yes, I do. They are  
7 members of my organization.

8 BOARD MEMBER KATZ: I just thought --

9 MS. ROTHFLEISCH: Let me just clarify.  
10 There is somebody on the local entity that  
11 represents the labor side of it. And they have  
12 people that are working from that angle of it.  
13 And that's a completely different side of it.

14 We understand, of course, labor is a  
15 huge issue. I mean we have -- we're in a labor  
16 crisis in California right now for agriculture.  
17 And that's why the Farm Bureau is fighting so hard  
18 for immigration reform for agriculture labor. So  
19 that is a huge issue for us.

20 But we believe that if we can keep the  
21 farm service providers in business they can keep  
22 their employees employed. And then they shouldn't  
23 have very great impacts to the labor sector. But  
24 if there are, we definitely believe that they  
25 should be mitigated for. We support that, but we

1 are not the ones that are going to come up with a  
2 plan for that. We believe there are people that  
3 are better suited to coming up with a mitigation  
4 plan for the labor side.

5 BOARD MEMBER KATZ: Let me make a  
6 suggestion. I think you ought to think seriously  
7 about what you just said. Because you clearly  
8 believe we ought to mitigate the impacts on the  
9 farmer, whether direct or indirect. And I would  
10 guess that without farmworkers very few of your  
11 farmers would be very successful.

12 So in talking in broader terms I think  
13 you ought to listen a little bit more to the point  
14 we're trying to make, and if I were representing  
15 the Farm Bureau, not only would they probably all  
16 shoot themselves, but if I was representing the  
17 Farm Bureau, you know, I would certainly take a  
18 much broader view of the community impact in terms  
19 of the kind of impacts we're talking about here,  
20 number one.

21 Number two, when you submit your  
22 testimony I would appreciate anything you can  
23 submit about the alternative jobs program, for  
24 lack of a better -- or the alternative business  
25 program that the gentleman before you spoke about.

1       Because without a doubt that has got to be the  
2       screwiest thing I've ever heard of.

3               So, I would be really interested to see,  
4       you know, -- we didn't design this to encourage,  
5       you know, folks who sell, you know, ag equipment  
6       to go into the shoe business. That wasn't the  
7       intent.

8               And if somebody at the local level  
9       thinks that's what was intended by economic  
10      offsets of mitigation, they ought to rethink that.  
11      But I'd appreciate whatever you could submit that  
12      sort of shows us that sort of misguided  
13      application of this thing.

14              MS. ROTHFLEISCH: Okay. And I would  
15      just like to respond again on the labor issue. I  
16      hope that our position isn't misconstrued, because  
17      like I said, labor is huge to us. We have to have  
18      ag labor there. And that's why we are fighting  
19      for it.

20              But at the moment we don't believe that  
21      any ag labor is being impacted because there is a  
22      shortage there. And our farmers are looking for  
23      more ag laborers. In fact, just this last  
24      vegetable season, some vegetable crops couldn't  
25      even finish being harvested because there wasn't

1 the labor there to do it.

2 And as I said, on the farm service side  
3 of it, if we can keep the farm service providers  
4 in business, then they will keep their employees  
5 employed.

6 But, if down the road when more and more  
7 acres are fallowed, there are greater impacts to  
8 labor, then I certainly support a program to  
9 mitigate their impacts.

10 Thank you.

11 CHAIRPERSON BAGGETT: Any other  
12 questions? Thank you.

13 Well, one last card. Now the answer  
14 man. The wisdom of years in the Valley. Bill,  
15 it's all yours. Mr. DuBois, we hope, --

16 MR. DU BOIS: Thank you for the  
17 recognition.

18 CHAIRPERSON BAGGETT: -- as usual, you  
19 can help us solve this one.

20 MR. DU BOIS: I had determined that I  
21 would decline to speak on the basis that my  
22 subject has been covered pretty well.

23 But due to Mr. Katz' comments to Nicole,  
24 I feel moved to defend Nicole, not that she needs  
25 it.

1                   BOARD MEMBER KATZ: I was hoping we'd  
2 hear from you, Bill. I was hoping we'd hear from  
3 you.

4                   MR. DU BOIS: But I promised her I  
5 wouldn't let you pick on her.

6                   BOARD MEMBER KATZ: And I haven't yet.

7                   CHAIRPERSON BAGGETT: Yeah, he's been  
8 nice.

9                   MR. DU BOIS: Richard, I want to tell  
10 you that there are not farmworkers, not many  
11 farmworkers that are out of work. Farmers are  
12 bidding for help in that situation. And you  
13 don't, I think, if it's your opinion that this  
14 thing has put farmworkers out of work, I think  
15 you're mistaken.

16                   BOARD MEMBER KATZ: No, my comment was  
17 that as we look forward to what may happen, that I  
18 think while we consider the tractor store and the  
19 feed store and the fertilizer store, we also want  
20 to consider farmworkers.

21                   That's all I meant. I was not implying  
22 that I think anybody's out of work today yet. I'm  
23 just talking about prospectively I think we need  
24 to look at the potential impact on all those  
25 categories, small businesses, larger businesses,

1 the workforce. That is what my comment was  
2 intended to.

3 MR. DU BOIS: Yes. Generally that's the  
4 reason that they don't have work is because their  
5 employers have been put out of business. Thank  
6 you.

7 CHAIRPERSON BAGGETT: Thank you. Any  
8 other cards? Comments?

9 I have a couple thoughts, but --

10 BOARD MEMBER KATZ: I tell you what,  
11 yeah, no, one of the things that I've very  
12 concerned, and I'm glad that we did it, and I  
13 appreciate everyone struggling through the fog and  
14 what-have-you for the fog of Sacramento, maybe, or  
15 the fog of the Water Board, to deal with this.

16 But there has been a lot of time and  
17 effort. There has been tremendous progress made.  
18 I think one of the things that we lose sight of in  
19 things like this, when it takes many years to put  
20 something together. And I think all of us who sat  
21 through the last days or months of the QSA, it  
22 seems like it took a lot longer to close the last  
23 5 percent than the previous 95 percent. The 95  
24 percent of which was much more significant than  
25 the last 5. But it's just hard. We lose track of



1 all that has been accomplished and all that's in  
2 place.

3 I'm just concerned that as this moves  
4 forward, and I know, as Mr. Osias said, we're in  
5 the beginning stages of the dispute resolution  
6 process in terms of the administrative piece of  
7 that. And I guess it goes from there to  
8 mediation, to binding arbitration.

9 And I know that the contract says that  
10 if you lose binding arbitration you can't walk  
11 away. But the reality is that if the arbitration  
12 comes out in a one-sided manner, walking away can  
13 be achieved in a number of different ways.

14 And it can have impacts, you know, you  
15 can walk away without ever leaving the table in  
16 some sense. And I'm very much concerned, and why  
17 I appreciate Art and Tam being here, and pulling  
18 this hearing together to try and just air some of  
19 that.

20 I don't want to see it get to that  
21 point, because I think even if binding arbitration  
22 resolves it, there could be long-term damage to an  
23 agreement that, you know, is up for 35 years and  
24 potentially longer, depending on how all this  
25 goes.

1                   So we have a lot at stake here. You all  
2 have a lot at stake here. And I think today was  
3 good to air some of that out. I'm hopeful that  
4 the disagreements are not as great as David said  
5 they were.

6                   But I'm also concerned that it seems to  
7 me that we have, in terms of these reports we're  
8 getting, if someone's writing night and it's day,  
9 that's a pretty fundamental problem in the data  
10 that's being put together. And we got to figure  
11 out a way to address that.

12                   I'm not quite sure what that is at this  
13 point, but I'm sort of throwing that out. But if  
14 we have that kind of just basic data gaps in it, I  
15 mean that's not even a data gap, I mean if folks  
16 can't figure out, can't all agree that right now  
17 it's, you know, seven minutes after four in the  
18 afternoon in Sacramento, then we're in a world of  
19 hurt trying to make this thing work. Not just for  
20 this one piece, but long term.

21                   And so David or Scott or Bill, anybody,  
22 I mean I'm sort of looking to you, also, to see is  
23 there something else we can do. No, Tony, we're  
24 not going to reopen the case. The order, I know  
25 what your suggestion is, I think, on how we get

1       there.  But at least speaking for me.  I don't  
2       want to prejudge what my colleagues are going to  
3       say.

4                But, you know, I would love to hear some  
5       thoughts, you know, about is there something else  
6       we can do besides having you all drag to  
7       Sacramento for a sunny afternoon?

8                MR. OSIAS:  Let me respond with a couple  
9       points, and part of it just organizational, also.

10               The question of socioeconomic impacts  
11       and mitigation has at least three ripe areas for  
12       disagreement.  Measuring the negative, figuring  
13       out what counts as a positive, and then what do  
14       you do with mitigation money, if you have some, --

15               BOARD MEMBER KATZ:  Agree.

16               MR. OSIAS:  -- to solve it.  Okay.  Each  
17       of those presents peculiar --

18               BOARD MEMBER KATZ:  But, we seem to have  
19       an agreement about whether it's Tuesday or  
20       Wednesday.

21               MR. OSIAS:  Right.  So, let me -- can we  
22       go to the hopeful thing that you --

23               BOARD MEMBER KATZ:  Okay.

24               MR. OSIAS:  -- asked about.  And then  
25       there was a question over here as how is it even

1 possible that we have such data misses and all.  
2 And although we are critical of the reports, okay,  
3 the data issue is easily solved. That's the good  
4 news.

5 BOARD MEMBER KATZ: I would hope.

6 MR. OSIAS: In terms of cause for  
7 optimism, which I think San Diego expressed and we  
8 expressed, that's not just instinctive optimism;  
9 in fact, some of us don't have that. But --

10 (Laughter.)

11 MR. OSIAS: But it's borne out by  
12 experience. The IID and San Diego, for that  
13 matter, have found that most of the time an  
14 education process is a precondition to solving a  
15 problem. And that is we each approach something  
16 with a different level of information. And it's  
17 important to finally get on the same page before  
18 we can get to a solution.

19 And as Mr. Slater said and as I said, on  
20 the questions of what are the negative impacts and  
21 what counts as a stimulus, we have spent a fair  
22 amount of time together discussing that. I think  
23 both sides are far better informed about each  
24 other's understanding. And we have some  
25 commonality of interest in terms of how to address

1 it.

2 And so I think the fact that we've been  
3 in the first stage of this dispute resolution for  
4 four meeting rather than one meeting and haven't  
5 even progressed to the next level. We're not  
6 anywhere yet, I guess, close to what could happen,  
7 which is binding arbitration. And then perhaps  
8 what could happen, your fear that if somebody  
9 really loses big that there's some negative ripple  
10 effect of some kind. We're not close to that.

11 And the fact that we've had four  
12 meetings; we have another one scheduled; we have  
13 homework assignments. In the old days we had  
14 those, and we still do. And that's why I think  
15 we're both optimistic.

16 And that's dealing, again, primarily  
17 with measuring impacts, measuring stimulus, and  
18 wedding those to a preventive program.

19 In terms of the issues raised by the  
20 Farm Bureau, Mr. Hanks and others about what do  
21 you do to mitigate impacts that have happened,  
22 assuming they have for just one moment. There is,  
23 you know, great variety of opinion at the local  
24 level as to whether mitigating those who have  
25 suffered, or trying to create new ways to create

1 jobs, you know, a very classic political debate,  
2 and so, you know, someone might agree it's silly  
3 to try to turn tractor salesmen into shoe  
4 salesmen. But someone would also see the long-  
5 term mitigation success of payments to out-of-work  
6 people, versus job-creation programs is also  
7 doomed for failure.

8 That debate is very much alive in the  
9 Imperial Valley. It's very much in the hands of  
10 other than IID and San Diego, who are, as I tried  
11 to describe, and I'll repeat if I can. You have  
12 two parties who are involved in funding. You have  
13 three economists who are involved in measuring.  
14 And then you have the local entity who is in  
15 charge of spending. And the what should it be  
16 spent on is very much a local entity problem.  
17 Okay.

18 But information that we all gather,  
19 whether it's economists or IID or San Diego, is  
20 obviously very useful. And is, in all things, I  
21 suspect, that will end up being some combination  
22 menu, whatever, pizza, whatever we want to call  
23 it, approach, because there isn't a right answer  
24 to this, and we are, frankly, on the frontier of  
25 dealing with this when we get to large scale.

1           Again, we're hoping, as everyone has  
2           said, to avoid the large scale. But this hasn't  
3           gone on a lot of places, and certainly not  
4           successfully anywhere that we've been able to  
5           identify in terms of actually mitigating these  
6           sort of programs.

7           The data problem, let me just circle  
8           back to that. IID signed, and San Diego, everyone  
9           signs an agreement in October. Water has to move  
10          by December 31. Farmers need to be signed up.  
11          That took some period of time.

12          So the contracts, the first set of  
13          contracts, were implemented; they'd been  
14          negotiated, signed, water created on fallowed  
15          fields starting December 1 of 2003. Not a lot of  
16          planning for that program.

17          Okay, the leasing years run July 1 to  
18          June 30, so we're even out of cycle. So that was  
19          a very weird program. '03 produces rather  
20          anomalous effects, because of the time of sign-up.  
21          You'll find that winter wheat was the principal  
22          first crop to be retired, because when people have  
23          to implement in December, you get a  
24          disproportionate amount of that.

25          The program has now shifted to matching

1 the leasing cycle, which is July 1 through June  
2 30th. So sign-ups are not mid-year, and the  
3 programs cover two calendar years.

4 IID used the first six or seven months  
5 to institutionalize data production. We now have  
6 these annual reports. They've yet to be used by  
7 the economists but I don't think that'll happen  
8 again. Just for no other reason than they've  
9 heard me say that the data's bad. They're getting  
10 much better information. I think if they re-did  
11 their first reports they would come out looking  
12 different.

13 Their conclusions I won't get to. Their  
14 data would be right. I don't think we're going to  
15 have any repeating of whether it's Tuesday or  
16 Saturday, or whether 10,000 acrefeet, 15,000  
17 acrefeet or 3500 acrefeet moved in 2003. We know  
18 that.

19 So, I view that as a unpleasant --

20 BOARD MEMBER KATZ: Anomaly.

21 MR. OSIAS: -- growing pain, yeah.

22 Okay. And I guess I would think that your hearing  
23 re-establishes the importance of this arrangement,  
24 QSA, water transfer, all that, Colorado River's  
25 use for California. I would think -- and that is



1       useful, I shouldn't use negatives. That's a  
2       useful thing to remind us. You have not been  
3       actively involved now for a couple of years, other  
4       than our reporting and your defending in the  
5       lawsuit.

6                 In terms of action I think I'm with  
7       Chairman Baggett and others, I think it's  
8       premature for you all to be thinking about  
9       anything to do.

10                CHAIRPERSON BAGGETT: I think there's  
11       some things we can do, but I'll wait till you're  
12       done.

13                MR. OSIAS: I think funding by the state  
14       of certain programs would be -- a variety of state  
15       level things that were suggested would take place  
16       in Imperial to help prevent activities.

17                CHAIRPERSON BAGGETT: Yeah.

18                MR. OSIAS: I think everyone in this  
19       room is in favor of that. And if you can pull  
20       that off, great.

21                But in terms of the disagreements that  
22       are being thrashed out, I don't think we're at a  
23       level where State Board involvement -- in fact,  
24       this had the potential to become a contest. And I  
25       think because we've been making progress it

1 didn't. So neither of us is trying to really  
2 persuade you why we're right; we're just going to  
3 tell you what we think.

4 And I think that's appropriate at this  
5 stage. And I would encourage you to remain hands-  
6 off on that aspect.

7 Thank you.

8 BOARD MEMBER KATZ: Okay, thanks.

9 MR. SLATER: Getting to your questions,  
10 I think we agree that the water transfer is  
11 certainly not broken. We're making progress. We  
12 certainly don't believe that there's a need to  
13 reopen at this time.

14 Board Member Katz says well, what do you  
15 need, or what are you asking for; and Director  
16 Baggett says, what's the remedy you're seeking.

17 I think a couple things have been  
18 identified in this hearing. One is we could use  
19 some help from DWR in terms of staying on schedule  
20 for the determination regarding the Salton Sea.

21 As Mr. Osias has pointed out, to the  
22 extent that that determination is made, and it's  
23 made on time, and a decision is made to implement  
24 that, that really takes the pressure off the  
25 following because we could move to efficiency. So

1 that, in our mind, is huge.

2 Secondly, the state did provide dramatic  
3 assistance to the parties in calendar year 2003  
4 towards completing the QSA. And in San Diego's  
5 view, we're going to leave billions of dollars at  
6 the Imperial County line over the life of this  
7 transfer. And a mechanism which has been put in  
8 place which is dominated by a process to count  
9 impacts related to what might occur on the ground  
10 and set up additional mechanism.

11 To the extent that the state can assist  
12 us in leveraging what is already being contributed  
13 by the parties and will be contributed by the  
14 parties to create a preventative, proactive,  
15 positive impact, that would be hugely beneficial.  
16 I think we would all embrace a process which or  
17 assistance which got away from the measurement,  
18 and counting details of whether somebody's cooking  
19 one less flapjack in 2006. And get on to what do  
20 we do about spurring investment, additional  
21 investment in Imperial County, and trying to, on a  
22 global way, do justice, if you will.

23 CHAIRPERSON BAGGETT: Thank you.

24 BOARD MEMBER KATZ: Thanks.

25 CHAIRPERSON BAGGETT: Do we have any

1 closing comments?

2 MR. ROSSMAN: Well, I think we're in  
3 agreement that the state can be of big assistance  
4 to us here. And just so that I'm not  
5 misunderstood, our desire to reopen this hearing  
6 is no greater than yours. But that is a last  
7 resort --

8 CHAIRPERSON BAGGETT: Thank you.

9 MR. ROSSMAN: -- as your order does  
10 recognize.

11 CHAIRPERSON BAGGETT: Thank you.

12 BOARD MEMBER KATZ: Maybe we can build  
13 on that common agreement.

14 (Laughter.)

15 CHAIRPERSON BAGGETT: Okay, well, thank  
16 you. No other comments.

17 I think, in only closing comments, I  
18 think at least what I've gleaned from the comments  
19 so far today is some direction for where we can  
20 head the next few months.

21 I think one is this is an order that I  
22 think even at the time none of us quite realized  
23 the magnitude of. I can tell you it mystifies my  
24 colleagues in other western states that we even  
25 did this order with socioeconomic impacts in it.

1           And a number of other things like what  
2           does this order have to do with water rights. But  
3           we worked through the strange glances at meetings.

4           I think it clearly broke new ground on  
5           the socioeconomic issue. But it's really nothing  
6           more, I guess, over the last census or over the  
7           last three years, we've noticed it's just a  
8           microcosm of basically what's going on in  
9           agriculture in the state in many ways.

10           And I think because of that it's even, I  
11           guess the importance is even heightened in my eyes  
12           today.

13           I think one, the availability of labor  
14           is an issue, not just in Imperial County. It's  
15           the areas where I come from, in the San Joaquin,  
16           and if you look in the Sac Valley, economic  
17           retooling of rural areas in California is going on  
18           everywhere from Klamath to the border, the  
19           southern border.

20           I think the urban encroachment issue,  
21           water transfer issues, just talk to the rice  
22           farmers. This is not limited to this issue. And  
23           I think the straw that's really changing the thing  
24           is the globalization of not only ag sales and  
25           marketing, but the production of agriculture is

1 definitely changing the world we're all working in  
2 here.

3 So I think it is critical we use this as  
4 maybe a way to view, maybe this is one mechanism  
5 to deal with some of those complex issues.

6 I guess the three actions I'd see right  
7 now is one, if Celeste could work, I think, with  
8 Richard, particularly, and probably myself or Tam,  
9 I think one, to go back and relook at the Duchenev  
10 legislation; set up a meeting with Food and Ag to  
11 discuss that.

12 And I think that action there would be  
13 to develop at least some proposals, some BCPs or  
14 alleged proposals for consideration by the  
15 administration. I think all of you who have been  
16 around, or many of you who have been around it,  
17 the world of state government, realize we can't  
18 commit to anything, but we can at least throw some  
19 proposals forward to see what happens, discuss  
20 them with our colleagues.

21 Secondly, I think we need to look at  
22 Celeste as the representative of the Salton Sea  
23 work with Lester Snow and Mike Chrisman. And I  
24 think the message is loud and clear what we need  
25 to have Celeste send to that meeting with

1 Secretary Chrisman, is that we really need the  
2 timeline followed. Not just because of the Sea's  
3 own right, but because it affects a lot of other  
4 things. And I think that's been loud and clear  
5 today. So I think that message we can deliver.

6 And I think we've got 30 days for  
7 comments. And I can tell you Richard and I will  
8 be meeting with staff as we get those, and trying  
9 to figure out, you know, what is the role, how do  
10 we encourage. I think we've heard some good  
11 things here where we can play a positive role and  
12 help move things forward.

13 But like I said, if you put this in  
14 context of what's going on everywhere else, I  
15 think it's even more important we try to grapple  
16 with these. It's a tough issue. Being a rural  
17 person, myself, and a former rural supervisor,  
18 it's a tough, tough issue to deal with.

19 But I think this gives us an opportunity  
20 to maybe put it in that context, also.

21 BOARD MEMBER KATZ: I was just going to  
22 add one thing to what you're saying, Art. I think  
23 maybe we'll -- just to keep it formal, or a little  
24 more formalized than that, maybe along with  
25 Celeste covering it is we ought to just send a

1 letter to Lester saying as a result of this we're  
2 inquiring about the schedule, you know. Want to  
3 make sure we stay on track with DWR's schedule.

4 But also, to CDFA also, in terms of, you  
5 know, have they pursued money; are they going to  
6 pursue money in the budgets being prepared now. I  
7 mean at least try and get some more folks on the  
8 record in terms of this kind of discussion.

9 And then look at the comments that come  
10 in and see where else we can go to help folks keep  
11 this thing moving forward.

12 But I also appreciate everybody, you  
13 know, struggling with the schedules and the fog  
14 and just the difficulty of getting up here, so,  
15 thank you.

16 CHAIRPERSON BAGGETT: Thanks for making  
17 the long trip up here. I think it's well  
18 worthwhile, at least from our perspective.

19 BOARD MEMBER KATZ: Yes.

20 CHAIRPERSON BAGGETT: Thank you.

21 BOARD MEMBER KATZ: Thanks, everybody.

22 (Whereupon, at 4:21 p.m., the meeting  
23 was adjourned.)

24 --o0o--

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CERTIFICATE OF REPORTER

I, PETER PETTY, do hereby certify that I am a disinterested person herein; that I recorded the foregoing hearing on a tape recorder; that thereafter the tape recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of September, 2005.

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