

STATE WATER RESOURCES CONTROL BOARD

PUBLIC HEARING ON AMENDED JOINT PETITION OF THE
IMPERIAL IRRIGATION DISTRICT AND THE SAN DIEGO COUNTY WATER
AUTHORITY FOR APPROVAL OF A LONG-TERM TRANSFER OF CONSERVED
WATER PURSUANT TO AN AGREEMENT BETWEEN IID AND SDCWA, AND
APPROVAL OF CHANGES IN POINT OF DIVERSION, PLACE OF USE AND
PURPOSE OF USE UNDER PERMIT NO. 7643 (APPLICATION 7482).

WEDNESDAY, MAY 29, 2002
8:30 A.M.

CAL EPA BUILDING
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

REPORTED BY:

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SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 29, 2002, 8:30 A.M.

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CHAIRMAN BAGGETT: Let's go back on the record.

Back to rebuttal testimony for Imperial Irrigation
District proposed transfer with Salton Sea Authority.

MR. KIRK: Morning, Mr. Chairman, our three witnesses
do need to be sworn in.

(Oath administered by Chairman Baggett.)

CHAIRMAN BAGGETT: Thank you.

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DIRECT EXAMINATION OF SALTON SEA AUTHORITY

BY MR. KIRK

MR. KIRK: Start with you, Mr. Pelizza.

Mr. Pelizza, can you please provide the Board an
overview of your qualifications?

MR. PELIZZA: Yes. My name is Charles Pelizza, and I
am currently the senior wildlife biologist at the Sonny Bono
Salton Sea National Wildlife Refuge. I have been with the
Fish and Wildlife Service for approximately 22 years,
portions being in various positions as a wildlife biologist
throughout North America. Prior to this position I worked
as a wildlife biologist for national wildlife refuges in
South Dakota and as a regional biologist for refuges in New
Jersey, New York and Pennsylvania.

1 I received my undergraduate education in 1982 from
2 Elmira College in Elmira, New York. Most recently my
3 graduate education was finished up last year at the
4 University of South Dakota in Vermillion, South Dakota.

5 MR. KIRK: You are familiar with the Sonny Bono Salton
6 Sea National Wildlife Refuge, familiar with operations and
7 wildlife disease operations there as well?

8 MR. PELIZZA: Yes. As part of my position and
9 responsibilities I have oversight of administrative
10 responsibilities for that program.

11 MR. KIRK: Are you aware that IID as a part of these
12 proceedings has introduced evidence on wildlife diseases at
13 the Salton Sea?

14 MR. PELIZZA: Yes, I am.

15 MR. KIRK: I think it is IID Exhibit 74 and 75. I have
16 shared those with you?

17 MR. PELIZZA: Yes.

18 MR. KIRK: Are you aware that that information only
19 went up to 1996 and included a few years in the early '90s?

20 MR. PELIZZA: Yes.

21 MR. KIRK: Did IID contact you or to your knowledge
22 anybody else at the refuge about the significance of this
23 data in context of bird populations at the Sea?

24 MR. PELIZZA: I'm sorry, can you restate the question?

25 MR. KIRK: Sure.

1 Did IID contact you or to your knowledge anybody else
2 at the refuge regarding the significance of that data in the
3 context of bird populations at the Sea?

4 MR. PELIZZA: They have not contacted me that I am
5 aware of and no one else at the refuge has been contacted.

6 MR. KIRK: Did they ask you to provide post-1996
7 wildlife disease data?

8 MR. PELIZZA: No, they did not.

9 MR. KIRK: Had they asked you, would you have provided
10 it?

11 MR. PELIZZA: Yes.

12 MR. KIRK: Wildlife disease is a significant problem at
13 the refuge; is it not?

14 MR. PELIZZA: The term "significant" carries a
15 scientific connotation of being a mathematical probability,
16 so I might rephrase it as being of management concern.

17 MR. KIRK: Is it a management concern at the refuge?

18 MR. PELIZZA: Yes.

19 MR. KIRK: Was the information provided as Exhibit
20 Salton Sea Authority No. 25 and 26 provided by you and the
21 refuge?

22 MR. PELIZZA: Yes, that's correct.

23 MR. KIRK: Do you have 26 there or are you familiar
24 with it?

25 MR. PELIZZA: I don't have a copy of it in front of me.

1 MR. KIRK: Charlie, can you briefly explain who
2 provides this information and how it is collected?

3 MR. PELIZZA: The information that was collected for
4 Exhibit 26 is a compilation of data collected from three
5 agencies that are involved in the disease response program
6 at the Salton Sea. And the data as it is collected is
7 brought to our office where it is cataloged and managed. So
8 this data comes from the files, record keeping and
9 collection of the National Wildlife Refuge, the Salton Sea
10 Authority and California Department of Fish and Game.

11 MR. KIRK: Looking at Exhibit 26, sure looks like 1996
12 was a notoriously bad year. Is that -- perhaps not
13 scientifically. I don't know if notoriously bad year is the
14 right way to put it, but --

15 MR. PELIZZA: There is not a scientific word for
16 notorious.

17 MR. KIRK: -- a bad year for avian botulism at the
18 Salton Sea?

19 MR. PELIZZA: Yes, it was.

20 MR. KIRK: Is it fair to say 1996 was on the order of
21 tenfold greater in terms of total affected birds than any of
22 the other years shown on this record?

23 MR. PELIZZA: Yes. Actually, if you look at the
24 five-year average after 1996, I think it's 13 times higher.

25 MR. KIRK: Thank you.

1 Looking at this data in a little bit more detail, could
2 we draw any inferences about the number of sick birds to
3 dead birds as a ratio? It looks like we had a lot of dead
4 birds in the mid 1990s and a lot more sick birds than dead
5 birds in the late '90s?

6 MR. PELIZZA: Yes. Back in 1996 the percentage of live
7 birds being picked up was only 12 percent of the total birds
8 that were handled. And for the past two years we have been
9 at 63 and 62 percent of the birds picked up were alive upon
10 capture.

11 MR. KIRK: Is there a concerted effort at the Sea to
12 reduce the number of dead birds and to nurse sick birds back
13 to health?

14 MR. PELIZZA: Yes. We have a very extensive disease
15 response program an the Salton Sea.

16 MR. KIRK: Approximately when did that begin?

17 MR. PELIZZA: The disease response program actually
18 started in 1996 in kind of a reactive mode to the disease
19 outbreak that was occurring, and since that time the program
20 has gradually increased and expanded.

21 MR. KIRK: What does the program involve today?

22 MR. PELIZZA: Currently there are several phases to the
23 disease response program. There are at the Salton Sea three
24 agencies that I mentioned earlier: California Department of
25 Fish and Game, Salton Sea Authority and U.S. Fish and

1 Wildlife Service that maintains air boat patrols on the
2 shallow water areas of the Salton Sea to pick up live and
3 dead birds.

4 Of the pelicans that are picked up that are afflicted
5 with botulism, we have physical facilities at the refuge
6 headquarters where we go on and stabilize the pelicans prior
7 to the transport of the birds to one of five rehabilitation
8 facilities scattered throughout Southern California.

9 MR. KIRK: Have there been some successes in the
10 program, in your opinion?

11 MR. PELIZZA: Yes. There is a couple of measures that
12 we look at when we are evaluating our program. And one of
13 those measures we just talked about was the percentage of
14 birds picked up alive and getting to the rehabilitation
15 facilities as opposed to birds that are dead. And that's
16 increased from 12 percent to 62 or 63 percent.

17 The other measure of success is the actual
18 rehabilitation success, which is we look at the birds that
19 are brought to the rehabilitation facilities and look at
20 their success in getting out of the facilities. That has
21 increased from approximately 30 percent back in 1996 to up
22 to 54 percent currently.

23 MR. KIRK: Do you think the program has perhaps had
24 some positive effect on the total number of birds affected
25 as well?

1 MR. PELIZZA: Yes. In part one of the things we are
2 trying to do with picking up the dead and live birds is to
3 stop another portion of the botulism disease cycle from
4 getting a foothold. So the process of being out on the Sea
5 and collecting birds and getting them to rehab as well as
6 cleaning up the carcasses is important.

7 MR. KIRK: In your opinion, Charlie, did the wildlife
8 disease problems at Salton Sea, what do you call them
9 management concerns --

10 MR. PELIZZA: Uh-huh.

11 MR. KIRK: -- issue of management concerns merit
12 abandoning the Salton Sea as a habitat for the Pacific
13 Flyway and birds along it?

14 MR. PELIZZA: No, in my opinion it does not. The
15 reasons are a few. First, there are 407 species of
16 migratory birds that utilize the Salton Sea and the Imperial
17 Valley. There are many more species other than those under
18 discussion here today on the brown and white pelicans.

19 If we look at brown and white pelicans alone, they are
20 found at the Sea throughout the entire year. And the
21 resources provided to the birds occur throughout the year
22 and are not only being provided or during the botulism
23 outbreak period. Also, if you look at the total number of
24 birds that are being affected and you factor in the success
25 rate of our rehabilitation facilities and getting birds off

1 the Sea, we're really looking at about only 5 percent of the
2 population that is found at the Sea as being affected. So
3 there is 95 percent of the birds, the pelicans, that are
4 found on the Sea that are gaining resources from being
5 there.

6 MR. KIRK: Thanks.

7 I have one minor thing I think for you as well. And
8 that is IID introduced Exhibit 75, as we mentioned U.S. Fish
9 and Wildlife Service National Wildlife Refuge Wildlife
10 Mortality Estimates 1987 to 1996. In part they introduce
11 that and asked some questions about the sports fishery.
12 That web page seems to suggest that the sports fishery at
13 the Salton Sea is nonexistent today.

14 Can you clarify what that means? Is the sports fishery
15 in nonexistence today?

16 MR. PELIZZA: In reference to the comments, I can't
17 speak to that comment directly, as to what the intent of the
18 author was because there is no author listed for that
19 comment. Also, remember, that comment was made in 1996,
20 probably during the disease outbreak. So I am not sure it
21 is referencing a specific point in time back in 1996.

22 But clearly today, in today's presence in 2002, the
23 sport fishery is quite alive. And if you visited the Salton
24 Sea within the past couple of months the state park and all
25 the boat ramps have been full and active.

1 MR. KIRK: To your knowledge, there is a sports fishery
2 at the Salton Sea?

3 MR. PELIZZA: Yes.

4 MR. KIRK: You are not sure why that comment is
5 included on the data on the 1996 mortality?

6 MR. PELIZZA: That's correct?

7 MR. KIRK: Thank you, Mr. Pelizza.

8 Let's move on to Dr. Friend.

9 Milt Friend, can you provide the Board an overview of
10 your qualifications?

11 DR. FRIEND: Yes. There are two documents in your
12 package that you may want to refer to that were provided to
13 establish a foundation for my qualifications relative to
14 speaking to matters of wildlife disease and wildlife
15 ecology.

16 At the end of Exhibit 31, which is a paper I will be
17 presenting in Washington in a couple weeks, there is a
18 personal credentials statement, and it highlights formal
19 education, work experience, professional stature and Salton
20 Sea experience as being the basic foundation. You will note
21 from that that I hold joint Ph.Ds. in veterinarian science
22 and in wildlife ecology, with a minor in epidemiology and
23 also have a minor in epidemiology at the Master's level.

24 From a work experience standpoint, I developed the
25 concept of the National Wildlife Health Center, wrote the

1 originating document and directed that program from its
2 origin in 1975 until I was assigned out here to the Salton
3 Sea by Secretary Babbitt at the end of 1997. I'm sorry,
4 till the end of 1998.

5 That program is acknowledged as the premier wildlife
6 disease program that exists anywhere in the world. It is
7 the most comprehensive, and because of its activities, I
8 have had the opportunity to work internationally on all
9 matters of wildlife disease issues and also across the
10 nation. I have worked in almost every state and much work
11 in California.

12 In terms of the professional stature, in addition to
13 serving as director for over two decades of the National
14 Wildlife Health Center, I'm an adjunct professor of animal
15 health and biomedical sciences at the University of
16 Wisconsin, Madison, where I have been teaching approximately
17 a quarter century. I also teach in London at the Royal
18 Veterinary College in terms of animal diseases. This summer
19 I will again participate in an environmental program run by
20 the University of Illinois and others. I am a frequent
21 guest lecturer.

22 In terms of Salton Sea experience, I was appointed to
23 serve as Executive Director of the Salton Sea Science
24 Subcommittee in 1999 at the initiation of the current
25 restoration program. That transition then took place to be

1 the chief scientist heading up the Salton Sea Science Office
2 until a year -- several months ago when I returned to
3 Madison to complete some other activities.

4 If you look at the CV, just make one comment. I think
5 it is enough in terms of my background. But the CV does
6 establish as Exhibit 23 that my first peer review
7 publication in the field of wildlife disease was published
8 40 years ago. And I only comment on that to establish my
9 longevity in terms of dealing with wildlife health issues.
10 You will also note in that CV various contributions and
11 activities that have resulted in national and international
12 peer recognition.

13 MR. KIRK: Milt, can you briefly describe the emergence
14 of infectious diseases affecting both wildlife and humans in
15 the past couple decades, and we will relate that back to the
16 Salton Sea in a minute.

17 DR. FRIEND: Basically, globally emerging infectious
18 disease has been an issue of concern from the arctic to the
19 tropics and anywhere in between. The emergence of
20 infectious disease, which was once thought to be concurred
21 in developed countries of the world, started to appear in
22 the 1980s in terms of human disease and decades earlier in
23 terms of wildlife. The Salton Sea simply reflects what is
24 taking place on a global scale in terms of disease emergence
25 and is no more unique than those events that are occurring

1 on a everyday basis.

2 MR. KIRK: Let's scale back from global to a North
3 American and U.S.

4 One, is avian disease widespread in North America?

5 DR. FRIEND: Yes. Probably one of the best ways to
6 represent this simply would be to put a couple of slides up
7 which you have as exhibits. Put this first slide up and
8 explain.

9 I think this pretty graphically shows you what is
10 taking place. Basically this is one of two maps that I put
11 together. Understand that as Director of National Wildlife
12 Health Center, I have access to the most extensive database
13 that exists anywhere in the world in terms of disease
14 emergence.

15 What you are looking at here --

16 CHAIRMAN BAGGETT: Excuse me, do you have an exhibit
17 number?

18 MR. KIRK: Exhibit 28.

19 DR. FRIEND: What you are looking at here is a tally
20 from our database at the National Wildlife Health Center all
21 major migratory bird die-offs from the period of 1980 to
22 1990. Each of those symbols represents an event of a
23 thousand birds lost or greater, and that goes up to a
24 hundred thousand plus.

25 What you should have been -- in point of reference each

1 dot is simply an index to an event. It is not
2 geographically located within the state or province in terms
3 of where it occurs. I have been working in California
4 personally since the start of the laboratory. Most of that
5 has been in the Sacramento area, the Yolo Bypass and further
6 north. Interesting that I had never been to the Salton Sea
7 prior to the events that started to unfold in the 1990s. I
8 simply make that statement as a reference point in terms of
9 the fact that waterfowl disease and migratory bird disease
10 is fairly rampant in California, has been so historically.
11 We have events throughout the state. Many of those events
12 far exceed what takes place at the Salton Sea.

13 So what you are looking at here is simply a tally that
14 shows major events, only what is reported to the National
15 Wildlife Health Center, it grossly underrepresents what is
16 taking place in North America. There is virtually no
17 reporting in Mexico even though we know that there are lots
18 of events.

19 The key point here that I think you should appreciate
20 is that you will see major events in pristine wilderness
21 areas of mountain Canada where there are virtually no people
22 or human intrusion, all the way to Hudson Bay in major water
23 bodies to Saskatchewan all the way down to Mexico.
24 Personally been on the ground in Mexico where I couldn't
25 walk without stepping on the carcasses of dead birds from

1 avian botulism in the 1970s.

2 So, that is a phenomenon, and this is pretty
3 representative of what is taking place.

4 I'm sorry I don't have a slide for the next one, but
5 you do have a handout. This takes you to the current
6 period. It was part of the same exhibit.

7 MR. KIRK: This is the second page of Exhibit 28.

8 DR. FRIEND: What you'll notice there, of course, is
9 that the pattern is exactly the same, except note the
10 expansion of disease in Canada in terms of the many more
11 major events, and adding new states like North Carolina and
12 Florida where historically we haven't been having these
13 problems. It is just testimony to this whole issue of
14 emergence of disease.

15 To give you some perspective on the magnitude of those
16 events, there is another exhibit that you have that I don't
17 have a slide of, but --

18 MR. KIRK: This is your Field Manual of Wildlife
19 Diseases?

20 DR. FRIEND: Field Manual of Wildlife Disease.

21 MR. KIRK: Exhibit 29.

22 DR. FRIEND: What you will see that events can exceed
23 avian botulism, a million or more birds from a single
24 event. And I comment on that. If you look at those tables
25 for avian botulism and avian cholera, the two most common

1 diseases that exist at the Salton Sea, you do not see the
2 Salton Sea listed among those examples because these other
3 are so much greater.

4 And if you look at 1997 avian botulism situation, to
5 put that disease in perspective for you, a million birds
6 died in Saskatchewan. Those left there, flew to the Great
7 Salt Lake and another half a million of them died there. So
8 it is 1.5 million birds in two events back to back impacting
9 on the same population. So a reflection of what is taking
10 place out there.

11 MR. KIRK: The Salton Sea certainly has wildlife
12 disease problems, doesn't it?

13 DR. FRIEND: Absolutely. That was a major driving
14 force for the restoration project. And the whole aspect of
15 what I have been presented here is what is going on in terms
16 of the world.

17 MR. KIRK: Dr. Friend, I think it was the Chairman that
18 asked a question earlier in these proceedings about the
19 significance of disease at the Salton Sea, when we have a
20 major disease event, last year, the year before, is it
21 affecting -- I think Mr. Pelizza pointed out the percentage
22 of birds, pelicans, affected, but total number of birds, are
23 we affecting 50 percent of the birds at the Salton Sea in a
24 disease event? 25 percent? 10 percent?

25 DR. FRIEND: I'd rather answer the question in a little

1 different perspective. The total numbers of birds can be
2 misleading. One needs to look at the species being
3 impacted. Because we have at the Salton Sea a number of
4 populations that are highly dependent upon the Sea. And I
5 haven't gone back at this point in time to tease out that
6 data. But when one starts losing endangered species, you
7 start to talk about critical threshold levels for
8 maintaining populations. And, remember, that disease is
9 only one mortality factor among many that impact
10 populations. So, typically, we look at a small percentage
11 of the total numbers of birds but to really look at that
12 data, one would need to go on the species basis. My general
13 opinion is that the disease issues at the Salton Sea, while
14 noteworthy in terms of events that need to be dealt with for
15 a number of reasons which I can elaborate on, are pale in
16 comparison to the events that I just referred to.

17 MR. KIRK: Let's move on a little bit. You've written
18 the emergence of wildlife disease. And I think you made a
19 point there about the data in the '80s compared to the data
20 of the '90s, and you saw some expansion in the number of
21 disease events.

22 Why is disease emerging or expanding or becoming more
23 significant in wildlife populations?

24 DR. FRIEND: There again, I think the easiest way to do
25 this would be to just put up a couple slides.

1 Is it okay to stand up here for a couple of minutes?

2 CHAIRMAN BAGGETT: Talk into the mike.

3 DR. FRIEND: The first thing to put in perspective is
4 that disease is an outcome. Disease occurs because of
5 specific conditions. And what I am going to illustrate to
6 you is some of the conditions that are involved.

7 First, recognize that disease events are associated
8 with migratory birds, and that these birds move along
9 pathways. This is a stylized diagram which you have as a
10 handout.

11 MR. KIRK: This is proposed Exhibit No. 32, which we
12 just brought copies today. I will make copies for the
13 Board.

14 DR. FRIEND: These slides are for the record. You can
15 have these.

16 What you are looking at is the Pacific Flyway, and a
17 key point here is that California is part of the Pacific
18 Flyway. And what you have is a funneling effect. So you
19 have birds that come from vast areas of the north, and they
20 move down these corridors. They are pretty much contained
21 by terrain, mountains and things of that nature. But as
22 they make this journey down to their wintering grounds and
23 then return, they need to have certain things like fuel and
24 resting, and those sorts of things.

25 What is happening in the world is that the habitat base

1 that these birds have historically been dependent upon has
2 been diminishing at a fairly significant rate. And
3 California has the distinction of leading the nation, looks
4 like that slide is hard to read, but 91 percent of the
5 wetlands at the time of settlement are gone. And another 4
6 percent have been significantly degraded. So --

7 MR. KIRK: May I interrupt you?

8 This will be proposed Salton Sea Authority Exhibit
9 33. I apologize to those that did get black and white
10 copies, I note that the numbers in the state boundaries
11 aren't provided. I will make color copies of this exhibit.

12 DR. FRIEND: This is 91 percent. So basically what
13 you are doing is taking this mass of -- the Pacific Flyway
14 has the largest concentrations of birds of any other flyway.
15 Take this mass of birds, you're squeezing it down into less
16 and less habitat, and one of significance relative to the
17 Salton Sea. This is just a comparison of the Central
18 Valley, because has been the premier migratory waterbird
19 area of the state. What happened about the time this --
20 just Central Valley data? And again, the slide is for the
21 record. Put together at our center.

22 1906, about the time that the Sea was formed, you see
23 the extent of waterbird habitat within the Central Valley,
24 and today in the reference of this slide, about 1990, you
25 can see how diminished that habitat is.

1 What happens when you do this just, you think in terms
2 of human conditions, of people moving into crowded cities
3 and the environmental degradation that takes place, and what
4 you set up is environmental conditions that facilitate the
5 expression of disease. Transmission takes place a lot
6 easier. The maintenance of the organisms are sustained
7 under these environmental conditions.

8 So it's totally analogous to what happens with humans.
9 And we're seeing the same thing in terms of wildlife with a
10 number of other factors involved.

11 So what's happened for the Salton Sea, and this is an
12 exhibit that you've seen before, is that it's become a focal
13 point.

14 MR. KIRK: This exhibit, if it is all right with
15 counsel and the parties, I believe this is part of the
16 University of Redlands' slide show. And, in fact, glossies
17 show it is a derivative of it at the very least.

18 DR. FRIEND: What you see here, all the yellow dots are
19 of abandon recovery of birds that have abandoned at the Sea.
20 Rings put on. They were trapped at the Sea. They were
21 marked and then they've been recovered in most cases at
22 these other locations.

23 What this illustrates is the dependency of the birds
24 are having on the Sea because, basically, it is becoming the
25 only game in town because of the other losses that are

1 taking place.

2 Those slides are for the -- is all the slides I want to
3 use.

4 MR. KIRK: The Central Valley slide we will mark as
5 Exhibit 35. And the last exhibit, again, I believe is
6 provided in the University of Redlands. If you'd like, we
7 can make copies of that as well. That would be Exhibit 36.

8 DR. FRIEND: I need to make one other point, if I may,
9 to wrap this together. I made the comment that infectious
10 disease is now becoming a prominent aspect of disease
11 emergence and reemergence. Historically infectious disease
12 was not a factor in migratory birds. An example of a
13 infectious disease is avian cholera that I referred to
14 before.

15 One of the legacies of infectious disease is the
16 individuals that become exposed, do not die and become
17 carriers. Because these birds move from one location to
18 another, there are off-site impacts in terms of capability
19 to move disease, just as we move it with people, move AIDS
20 from the jungles of Africa to the cities of the United
21 States. We have the same situation going on here.

22 Avian cholera first appeared in the San Francisco Bay
23 Area in 1940, and it was a pretty stagnant situation in San
24 Francisco Bay. And in the Muleshoe in 1944, January 4, both
25 locations simultaneously, Muleshoe Refuge in Texas and San

1 Francisco Bay, both spillover events from poultry. And that
2 disease didn't go anywhere until the 1970s. Since the 1970s
3 we have watched it move up and down the state of California,
4 and we have watched it move now across the United States,
5 becoming a major disease problem for migratory birds. We
6 have lost many hundreds of thousands of birds on the
7 Canadian breeding grounds, probably birds that have been
8 affected here in the lower 48 and similar things happening.
9 The events with New Castle disease, an infectious virus, at
10 the Salton Sea in cormorants that showed up in the 1970s is
11 part of the picture of the emergence of New Castle disease
12 in cormorants that first appeared in North America in 1992
13 in Canada, and then into the United States, swept across the
14 Great Lakes and has now moved westward.

15 So my point here is that not only does disease move
16 from the Salton Sea to other places, but most of the
17 problems that you are looking at the Salton Sea probably
18 originated, in terms of exposure to the organism, at places
19 outside of the Salton Sea, and it's environmental conditions
20 that I referred to before that facilitate then the
21 transmission of those diseases and losses that we are
22 seeing.

23 MR. KIRK: Milt, I'm going to ask you one more question
24 about wildlife disease. I'm going to ask you to look into
25 your crystal ball.

1 If the Salton Sea's habitat degrades significantly, we
2 lose the food base for many of the birds, the Sea recedes,
3 becomes hypersaline, et cetera, what are the implications of
4 that on wildlife disease?

5 DR. FRIEND: I think they are pretty significant. One
6 of historical perspective that I find interesting and at
7 this point would be difficult to establish that it was a
8 cause and effect, but it hasn't really been looked into.
9 When the Sea was formed in 1905, 1907, it was 83 feet.
10 Historically --

11 MR. KIRK: Eighty-three feet deep?

12 DR. FRIEND: Eighty-three feet deep.

13 What happened, of course, was we didn't have much
14 agriculture. We didn't have much drain water, which is
15 analogous to the situation we are talking about, losing
16 water from the Sea. As the water receded till 1925, when it
17 hit its lowest point of 28 feet at the deepest point, that
18 coincides with the explosion of disease, avian botulism,
19 specifically at the Salton Sea.

20 Our first records of avian botulism at the Salton Sea
21 goes to 1917. From the mid 1920s to the mid 1930s at the
22 time when the Sea had dropped to a very low point, avian
23 botulism was rampant. We had die-offs in the tens of
24 thousands of birds, and we had continual events of that
25 nature. As water started to come back into the Sea and as

1 the levels started to rise, then disease kind of dissipated,
2 and it was at a very low level from the '40s to the '50s to
3 the '60s. And it did not start to become significant again
4 in terms of the magnitude of events and the frequency of
5 events until the late 1980s, which coincides with what is
6 going on in the rest of the world.

7 So, we should be very cautious looking at the historic
8 pattern of disease and thinking about events that could move
9 the Sea in that direction, relative to that.

10 Secondly, as the habitat degrades, is reduced in terms
11 of its volume, further concentration of birds will
12 exacerbate the situation with the potential of infectious
13 disease transfer. And I would be extremely surprised if we
14 did not have major disease problems associated with further
15 degradation of this water body.

16 MR. KIRK: Exhibit 31, let's move on to another topic.
17 You have written about the value of agricultural drain water
18 for sustaining avian biodiversity. Do you consider
19 agricultural drain water as valuable or invaluable for avian
20 biodiversity?

21 DR. FRIEND: I think avian drain water has to be -- I
22 think agricultural drain water or any drain water has to be
23 looked at as part of the global water resource. It is not
24 wastewater in terms of sustaining biodiversity. And the
25 reason for that is that the increasing human population

1 continues to put pressure on your finite limited water
2 resources. And all projections in terms of the water wars
3 to come and the dire impacts in terms of human population
4 are reflected manyfold over in terms of the habitat impacts
5 that has on wildlife. Wildlife did not receive the same
6 priorities.

7 So if we're really serious about sustaining
8 biodiversity on a global basis, we need to start looking at
9 how to better use drain water to sustain those populations.
10 I will be giving a presentation at the ecosystem health
11 meeting in Washington in a couple of weeks that is the
12 exhibit that you have that is just a draft of my comments
13 there. But I see the Salton Sea as the testing ground, the
14 proving ground. If we are truly serious about biodiversity
15 and especially biodiversity associated with wetland
16 dependent species, that drain water has to become an
17 increasingly important aspect of the water base that
18 sustains those types of critters.

19 MR. KIRK: Isn't freshwater better for habitat and for
20 avian biodiversity?

21 DR. FRIEND: Certainly freshwater is the preferable
22 situation, but it is unobtainable and always has been
23 unobtainable in terms of priority scheme. And it is not
24 very realistic to think that we're going to be able to
25 reverse that situation, especially given the increasing

1 demands, the U.N. projections in terms of population growth,
2 demands on water. There are many commissions that have been
3 put together to look at this global issue because it is so
4 significant.

5 MR. KIRK: Have you -- just a quick one, Milt. Have
6 you called the Salton Sea the crown jewel of California
7 avian biodiversity?

8 DR. FRIEND: Yes, I have. I have referred to it from
9 that perspective because approximately one-third of all the
10 bird species that have been recorded as breeders in the
11 state of California breed at the Salton Sea. That is a very
12 high percentage of the birds ever observed, and the number
13 escapes me right at the moment, ever observed in this state
14 has been observed at the Salton Sea. I have had the luxury
15 of working around the world and of being on many wetlands.
16 The closest I've seen to this was an artificial wetland in
17 India, Bharatpur, where Siberian cranes and other species
18 become very dependent. But that still pales in terms of
19 what I see out here. Two hundred species on an area is
20 really noteworthy and we have more than 400 recorded here.

21 MR. KIRK: Thank you, Dr. Friend.

22 Let's move on to you, Dr. Barnum. Could you provide
23 the Board with a brief overview of your qualifications?

24 DR. BARNUM: Yes. My name is Doug Barnum. My current
25 position is, I'm on a long-term loan from the U.S.

1 Geological Survey to an independent function called the
2 Science Office, Salton Sea science office. I am in the
3 position of science coordinator at that location.

4 I have a Bachelor's from University of Missouri at
5 Columbia in zoology. I have a Master's degree from
6 Washington State University in wildlife biology. And I have
7 a Ph.D. from Brigham Young University, a dual Ph.D. in
8 wildlife and range science.

9 I think the most critical thing to address is my
10 relevant experience to the situation. From 1985 to
11 basically the present, I am still officially in the position
12 of research wildlife biologist with U.S. Geological Survey.
13 Actually I started at Fish and Wildlife Service. That
14 function got rolled into a new agency, National Biological
15 Service, which got rolled into a new agency in the U.S.
16 Geological Survey. But it's been continuous service since
17 1985 to present, where I have been involved in doing
18 research, waterfowl and shorebird ecology in the Central
19 Valley of California on selenium contaminated evaporation
20 ponds. And my focus, although it has been a waterfowl bird
21 ecology, I deal with water quality, invertebrate ecology in
22 those situations, and it's always been with an examination
23 of the role of contaminants in these avian and invertebrate
24 ecologies, also.

25 MR. KIRK: I would like to ask you about the role of

1 contaminant at the Salton Sea and specifically selenium.
2 Generally, what are the impacts of selenium on fish and
3 wildlife?

4 DR. BARNUM: In a broad sense we can look at sublethal
5 and lethal impacts. And most of the work on selenium has
6 been done on breeding birds. It is very easy -- I won't say
7 it is very easy, it is easier to document impacts on
8 breeding birds than at any other point in their life cycle.
9 Primarily they are focused on a nesting situation and you
10 can evaluate -- they're sedentary in taking care of that
11 nest. You can evaluate either the effects on the eggs or
12 the effects on the adult birds or the effects on the
13 juvenile birds after they hatch.

14 They tend to be -- on a sublethal level there is
15 evidence of immune suppression, an immune system. There is
16 loss of feathers. There is accumulation of body fluid,
17 edema, and there is significant muscle atrophy with
18 long-term chronic exposure.

19 On direct lethal, of course, there is adult and
20 juvenile mortality. There is breeding birds, depressed egg
21 hatchability and embryo deformity or teratogenesis.

22 MR. KIRK: Has EPA identified a level or concern for
23 waterbird selenium?

24 DR. BARNUM: Yes. EPA has established a level of five
25 parts per billion, is the current level that is protective

1 of aquatic life.

2 MR. KIRK: When EPA or any other regulatory agency
3 establishes these standards for wildlife, do they provide a
4 lot of wiggle room, like DFDA might for human health
5 considerations?

6 DR. BARNUM: No. My understanding of the levels, the
7 threshold levels of toxicity is that for wildlife the levels
8 are set very close, almost at the level of the threshold of
9 toxicity.

10 MR. KIRK: Is EPA considering lowering their level of
11 concern for water borne selenium?

12 DR. BARNUM: It is my understanding that they are
13 considering lowering it to, I believe, to two parts per
14 billion.

15 MR. KIRK: What are the levels of water born selenium
16 in the drains and the inflows into the Salton Sea?

17 DR. BARNUM: From the information that I have seen they
18 are on the order of three to five parts per billion in the
19 drains themselves and on the order of roughly one part per
20 billion on the Sea.

21 MR. KIRK: Is there selenium found in the sediment of
22 the Salton Sea?

23 DR. BARNUM: Yes.

24 MR. KIRK: Where in the sediments? Where in the
25 bathymetry or the bottom of the Salton Sea?

1 DR. BARNUM: One of the scientific projects that we
2 were commissioned to help the science office involved an
3 evaluation that looked at that characterization of the
4 bottom sediments. And it reflects that the selenium tends
5 to show up in the deep waters. There is two deep water
6 basins, and relatively we are talking 40, 50 feet deep. The
7 selenium tends to be highest in those deeper sediments.

8 MR. KIRK: Is selenium found in the biota of the Sea in
9 the inflows?

10 DR. BARNUM: Yes, it is.

11 MR. KIRK: Let's discuss -- are you familiar with the
12 proposed project, the water transfer project?

13 DR. BARNUM: Yes.

14 MR. KIRK: You have some familiarity with their EIR,
15 the transfer EIR/EIS?

16 DR. BARNUM: Yes, I have.

17 MR. KIRK: Is it your understanding that water borne
18 selenium may increase about 25 percent in the drains and
19 rivers under the proposed project?

20 DR. BARNUM: I have seen that projection, yes.

21 MR. KIRK: Is it your understanding that the transfer
22 EIR does not project significant increases in the water
23 borne selenium in the Sea itself?

24 DR. BARNUM: Yes, my understanding.

25 MR. KIRK: If inflows to the Sea drop and water

1 elevation drops, isn't the selenium now found in deeper
2 water more liable to be bioavailable?

3 DR. BARNUM: That is one of the concerns is that as
4 water -- depending on how far the water level drops, is it
5 not only making it more bioavailable in terms of if the
6 shoreline drops there is more -- the area where these
7 shorebirds and waterfowl would feed, and some of the fish
8 would feed, then becomes the new shoreline. And that would
9 be our concern, that is in a new high selenium sediment
10 area. There is also possibility of selenium now that has
11 basically in anaerobic conditions in the deeper water is
12 more subject to being oxygenated and that would make it more
13 potentially bioavailable, too.

14 MR. KIRK: Let's move on to the Pacific Institute
15 proposal and the Science Office review. That has been
16 provided as Salton Sea Exhibit No. 12.

17 Can you describe your role in putting that assessment
18 or evaluation together?

19 DR. BARNUM: The Science Office was asked in November
20 of last year to undertake a thorough scientific and rigorous
21 review of this proposal. Dr. Friend and myself coordinated
22 a collection of experts in basically a one-month period and
23 primarily right before Christmas. We invited nearly 70
24 experts to participate in the fields of hydrology, water
25 quality, biology, disease contaminants and engineering. And

1 because of time constraints, people all had prior
2 obligations during that period of time, they already had
3 vacations scheduled, whatever reason, we were still able to
4 bring together 30, nearly 30 highly qualified experts, to
5 participate in some small focus groups.

6 These focus groups, the four that were held, two in
7 Riverside and two in San Diego, I believe, in mid December.
8 The results of those focus groups -- we asked one
9 participant from each focus group to serve as the lead, to
10 come back and make a presentation of their findings on
11 January 8 at a public workshop. The public workshop was
12 designed to bring together all the levels of expertise and
13 to build a consolidated document.

14 MR. KIRK: That document you provided to me several
15 weeks ago when I was preparing the direct testimony for this
16 process?

17 DR. BARNUM: I did. I provided a draft version, yes.

18 MR. KIRK: Has that document been updated?

19 DR. BARNUM: Yes.

20 MR. KIRK: Where are the changes you made to the
21 document since it was provided as Exhibit 12 in the Salton
22 Sea Authority's direct testimony?

23 DR. BARNUM: There has been some revised wording in the
24 executive summary and in the conclusions.

25 MR. KIRK: Revised in what way?

1 DR. BARNUM: It's revised to reflect the consensus
2 opinion of the expert group that we, as a general whole, I
3 can use we because Dr. Friend and myself also served as
4 participants in this process. We were part of the panels as
5 well as guiding the process.

6 The group as a whole found the proposal unsatisfactory,
7 very unsatisfactory. We could see no way as proposed that
8 the project would provide, I don't want to say, safety net
9 or enhancements of the existing Salton Sea resources, and it
10 could not salvage what we thought to be a significant
11 portion of those resources that currently exist.

12 MR. KIRK: Mr. Chairman and participants, I do have a
13 revised copy of Exhibit 12. The changes made in here in my
14 opinion are mostly editorial. I don't have strong feelings
15 about whether to replace the draft with the final, but it is
16 there for Mr. Osias or others. We can just stick with the
17 existing exhibit if you'd like.

18 CHAIRMAN BAGGETT: I don't know if you replace it, but
19 you can add.

20 MR. OSIAS: Right. I have two comments, one is that
21 one. It would be added.

22 CHAIRMAN BAGGETT: Added, yes.

23 MR. OSIAS: The fact that it wasn't circulated, of
24 course, prejudices us now that we've heard about it and he's
25 testified to it. In crossing him we don't have access to

1 it, which seems to be a bit unfair.

2 MR. KIRK: Again, deferring to the concerns, we'll just
3 stick with the existing exhibit, Exhibit 12. And, Mr.
4 Barnum, or, Dr. Barnum, could you restrict your comments to
5 the existing analysis that has been provided.

6 MR. OSIAS: Strike the testimony that he has just
7 given?

8 MR. KIRK: I'd be happy to do so. We can strike the
9 testimony related to the revision of the document and the
10 nature of the revisions that have been made.

11 MR. OSIAS: Okay.

12 CHAIRMAN BAGGETT: That would probably be --

13 MR. KIRK: That is the best way.

14 CHAIRMAN BAGGETT: -- the best way to deal with that.

15 MR. KIRK: Sorry about the diversion, Dr. Barnum.

16 You mentioned unsatisfactory, that just described the
17 Pacific Institute proposal as being unsatisfactory.

18 In what way? What are the significant concerns that
19 the experts raised?

20 DR. BARNUM: The concern was that whereas currently we
21 have a Salton Sea with a saline and projected in some cases
22 to be hypersaline environment, we would be substituting it
23 with a freshwater environment. The freshwater environment
24 there is certain characteristics of a saline environment
25 that are conducive to the kinds of critters, organisms, the

1 birds, the fish that we find there. By converting to
2 freshwater environment our group of experts felt that we
3 would lose an essential portion of that, of the current
4 existing structure, biostructure. We'd replace that with
5 something different, and we would replace it more with what
6 we find throughout California right now in freshwater
7 ecosystems.

8 There was concern that by building impoundments at the
9 south and north end of the Salton Sea, that the entire flows
10 of the New and Alamo River and Whitewater River would go to
11 these impoundments, and there would be now a freshwater
12 system that would take the entire nutrient load and focus
13 that on a very small area. So we were projecting more algal
14 blooms, more plant growth. The freshwater would be more
15 conducive to higher aquatic plants, a lot of emerging plants
16 growing out where we don't find that in the saltwater system
17 now.

18 There would probably be decrease in turbidity, but that
19 might be overcome with an increase with algal growth. So
20 there are tradeoffs. The nutrient flow was a significant
21 concern. Because, whereas as the Salton Sea now is taking
22 and moderating that over its entire volume, you would now be
23 concentrating that into a very small area, an impounded
24 area. It being freshwater, we were very concerned about
25 exacerbating the eutrophication situation.

1 MR. KIRK: What about contaminants?

2 DR. BARNUM: With respect to contaminants, specifically
3 selenium, again the smaller impoundment with a lot of
4 freshwater plants we were concerned that the entire load,
5 the entire burden, of selenium would be going to the
6 impoundment and ending up sequestered first in the plants
7 and then ending up as organic detritus and the algae and the
8 aquatic invertebrates that feed on the detritus and create a
9 food chain effect, selenium accumulation.

10 MR. KIRK: Were there also concerns about vector borne
11 diseases?

12 DR. BARNUM: Yes, there were.

13 MR. KIRK: And avian diseases?

14 DR. BARNUM: And avian diseases.

15 MR. KIRK: And overall project costs?

16 DR. BARNUM: The project costs were estimated in the
17 proposal and our engineering team and others involved in the
18 process felt that the projected costs were very much
19 underestimated.

20 MR. KIRK: Are you somewhat familiar with HCP No. 1 in
21 the transfer EIR/EIS, the idea of 5- or 6,000 acres of fish
22 pond?

23 DR. BARNUM: Yes, I am.

24 MR. KIRK: Perhaps fed with New River water?

25 DR. BARNUM: Yes.

1 MR. KIRK: Do you believe some of the same concerns
2 about the Pacific Institute proposal would apply to HCP No.
3 1?

4 DR. BARNUM: I think many of the same concerns would
5 especially if the source of water is from the New or Alamo
6 River.

7 MR. KIRK: What sort of concerns might HCP No. 1 share
8 with the Pacific Institute proposal or what are some of the
9 similar concerns you may have if you had a chance to take a
10 look at that proposal?

11 DR. BARNUM: The same range of issues about receiving a
12 nutrient flux, a nutrient burden that now has spread out
13 over the entire Salton Sea going into a very small area.
14 Even with reduced flows you still have a significant,
15 unmeasured nutrient load going in. You would have the
16 unmeasured contaminant load going in with selenium.

17 If the purpose is to provide fisheries, stocked
18 fisheries, for birds that will be feeding on those
19 fisheries, then you have a problem of the nutrients and the
20 contaminants going into a very small confined area and risk
21 a food chain contamination.

22 MR. KIRK: Earlier in this process we heard testimony
23 that project proponents worked a long time with the
24 Department of Fish and Game, spent a lot of hours, et
25 cetera, on HCP No. 1.

1 Was the Science Office ever asked to evaluate the idea
2 of fish ponds or HCP No. 1?

3 DR. BARNUM: No, we were not.

4 MR. KIRK: If the Science Office was asked, had been
5 asked to evaluate proposals designed to mitigate many of the
6 biological impacts at the Salton Sea of the proposed water
7 transfer, do you think the Science Office might have
8 assembled the same caliber and range of expertise to do so?

9 DR. BARNUM: I honestly don't have any doubt that we
10 would have. We've arranged a number of workshops on a range
11 of issues dealing with the Salton Sea over the past three
12 years, and all have gone out with the attitude we want the
13 best qualified experts to come to the workshops, review the
14 documentation and give their opinions to us so we can
15 provide the advice to the management agencies. This, again,
16 would be just one more example that we were requested for
17 our input, scientific input. We would try to arrange for
18 the best qualified experts to conduct the review.

19 MR. KIRK: Do you feel the Science Office conducts this
20 analysis in a fair and impartial way?

21 DR. BARNUM: I do. Not only is the conduct, I believe,
22 in a very unbiased manner, but the fact that we then take
23 the document that the experts produced and we send it out
24 for independent peer review. And we ask the group to go
25 back and incorporate those peer review comments in the final

1 document. It is the case of all of our products, we have
2 asked for independent scientific peer review.

3 MR. KIRK: Thank you, panel.

4 No further questions.

5 CHAIRMAN BAGGETT: Thank you.

6 We are going to do cross in reverse, back to IID first.
7 Do you want to take ten minutes?

8 MR. OSIAS: Yeah. I didn't know we are going in that
9 order.

10 CHAIRMAN BAGGETT: Reverse it again. Let's take a
11 ten-minute recess.

12 (Break taken.)

13 CHAIRMAN BAGGETT: Let's go back on the record.

14 We will begin the cross-examination of rebuttal with
15 Imperial Irrigation District.

16 CHAIRMAN BAGGETT: Thank you.

17 ---oOo---

18 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

19 BY IMPERIAL IRRIGATION DISTRICT

20 BY MR. OSIAS

21 MR. OSIAS: Thank you, Mr. Chairman.

22 Gentlemen, I don't believe I have met any of you. I am
23 David Osias. I'm the attorney for Imperial Irrigation
24 District. How do you do?

25 The only name I may not know how to pronounce is yours,

1 Mr. Pelizza.

2 MR. PELIZZA: Pelizza is good.

3 MR. OSIAS: Thank you.

4 Let me start by asking you to confirm that despite some
5 reductions in mortality, birds are still getting sick at the
6 Salton Sea; isn't that right?

7 MR. PELIZZA: Yes, that's right.

8 MR. OSIAS: In fact, if we look at your exhibit, not
9 yours, Salton Sea Exhibit 26, which you discussed in your
10 direct testimony, involving pelicans and botulism, we see,
11 for example, that in the year 2000 we had more brown
12 pelicans getting sick than we even had in that notorious
13 year of 1996; isn't that correct?

14 MR. PELIZZA: If you will look at the combination of
15 both sick and dead pelicans, I'd have to get my calculator
16 out, but we are little over 2000 in 1996 for birds affected,
17 and/or just at 1,200 or so, 1,300 in 2000. So, yes, it was
18 the highest count since 1996. We didn't quite match the
19 1996 birds affected.

20 MR. OSIAS: Although you combined the columns, and I
21 asked you to look at the sick column, the point is birds are
22 still getting sick, pelicans are still getting sick, and in
23 some years -- a sample of six isn't a huge sample, but in
24 some years there are still significant pelicans being found
25 at the Salton Sea, correct?

1 MR. PELIZZA: There are a number of pelicans being
2 found sick at the Salton Sea.

3 MR. OSIAS: And some of the sick numbers are in fairly
4 large magnitude if you assume 900 is a large magnitude,
5 correct?

6 MR. PELIZZA: Yes.

7 MR. OSIAS: For all of you, if you would avoid either
8 head nods or uh-huh because the reporter doesn't take those
9 down. If you don't, I'll unfortunately remind you.

10 The program that you described, which was having some
11 success, is sort of like avian Red Cross, I take it. It
12 tries to save sick birds; is that right?

13 MR. PELIZZA: That's correct.

14 MR. OSIAS: So it is not preventing the illness; it is
15 trying to identify sick birds early and see if you can treat
16 them back to health; is that correct?

17 MR. PELIZZA: It is providing two functions. The first
18 function is obviously the sick birds, we're getting them out
19 of the Sea, out of the hot environment and to rehabilitation
20 facilities. The other function it provides is, and Dr.
21 Friend would probably be a better one to describe the
22 pathways, the disease pathways, but there is another
23 botulism cycle that occurs on the Sea that affects
24 shorebirds and waterfowl, other bird species. And by
25 eliminating the dead birds from the Sea, you are eliminating

1 that pathway.

2 MR. OSIAS: So the preventative portion of this is
3 removal of carcasses or ill birds so that others don't come
4 in contact?

5 MR. PELIZZA: Correct.

6 MR. OSIAS: Other than it is primarily a treatment
7 function?

8 MR. PELIZZA: Yes.

9 MR. OSIAS: What is the dedicated budget to this Red
10 Cross effort for birds?

11 MR. PELIZZA: The overall disease response budget that
12 the Salton Sea is provided I believe comes from Congress as
13 an appropriation that has to be met by state funds as well.
14 And in each case I believe it is a million dollar
15 appropriation.

16 MR. OSIAS: So it is a million dollars from each
17 federal and state source per year?

18 MR. PELIZZA: Per year.

19 MR. OSIAS: And is there a long-term commitment or is
20 it an annual appropriation?

21 MR. PELIZZA: Currently it is an annual appropriation
22 until both sides agree at some point that it is going to be
23 long term.

24 MR. OSIAS: And I heard Dr. Friend's testimony, as you
25 did, about the bird disease elsewhere in the globe. Are

1 their similar bird rescue treatment disease centers in some
2 of these other spots he identified?

3 MR. PELIZZA: Yes, there are. There are several
4 National Wildlife Refuges here in California as well as
5 across the country that have, maybe not the extent that we
6 have at the Salton Sea Refuge, but they do have treatment
7 facilities set up on site as well if you look at oil spill
8 response.

9 MR. OSIAS: I wasn't going to oil spill. That is sort
10 of an incident caused cleanup event versus the mortality I
11 think he was describing more generally.

12 So there are others. Do you know if any of them are
13 funded to the same level of \$2,000,000 a year?

14 MR. PELIZZA: I'm not privy to that information. I
15 don't know.

16 MR. OSIAS: As best you know, Salton Sea rescue effort
17 is the largest in California to treat diseased birds?

18 MR. PELIZZA: Yes.

19 MR. OSIAS: Is that because of the significant impact
20 disease has had on endangered species, particularly the
21 pelican?

22 MR. PELIZZA: That's correct.

23 MR. OSIAS: There is not as much concern, maybe the
24 wrong word, at least in terms of funding and centers, there
25 is not as much focus on not endangered species who are

1 getting ill in terms of the bird population?

2 MR. PELIZZA: There is more sensitivity when you are
3 dealing with endangered species than with other bird
4 species.

5 MR. OSIAS: Dr. Friend, the comment about
6 overpopulation as a causative factor in global bird disease
7 caught my ear.

8 Is the Salton Sea over populated with birds at the
9 present time?

10 DR. FRIEND: I don't believe I used the term
11 "overpopulation." I think I used the term "concentration."
12 And I think the point that I made was that concentration of
13 waterbirds is an international phenomenon due to the
14 reduction in the habitat base which has left birds no
15 alternatives but to squeeze into less and less habitat to
16 sustain themselves.

17 MR. OSIAS: So that is not exactly what I asked you,
18 but we will start with that answer. I do believe at least
19 by analogy you said as we see in human illness outbreaks
20 overpopulation is a contributor, and I think now you have
21 just said we shouldn't look to population in total, but as
22 we squeeze more birds into smaller areas do not we see the
23 effects of overpopulation at least within the limited
24 habitat?

25 DR. FRIEND: "Over population" I do not believe was a

1 term that I used. I do not think that is an appropriate
2 presentation for human or for animals. What we talk about
3 is crowding as a means of facilitating the transmission of
4 infectious disease because of closeness of individuals.

5 So that when an avian influenza, water goes through a
6 city, it is because of the close contact between
7 individuals. The same thing happens in terms of wildlife.

8 MR. OSIAS: So, the Salton Sea is overcrowded or not?

9 DR. FRIEND: The Salton Sea is a concentration point.
10 It is the largest water body within the State of
11 California. To say that it is --

12 MR. OSIAS: Did my question confuse you?

13 DR. FRIEND: Your question is vague in terms of
14 requiring a definition of overcrowding. And my comment is
15 that birds are distributed at various locations around the
16 Sea. So that grebes, which can reach millions of birds, are
17 disbursed throughout the water body and are not under any
18 circumstance would they be considered as overcrowded.

19 In other situations one might have a large aggregation
20 of birds on a very small area. Where for that point in time
21 one could say this is a very dense aggregation that
22 facilitates the expression of disease should it occur. But
23 to be able to define the term that you are using, it has not
24 been defined in my mind by anyone in the scientific
25 literature.

1 MR. OSIAS: As you sit here today, based on your
2 expertise, you would not describe the Salton Sea as
3 overcrowded with birds?

4 DR. FRIEND: I would say -- no, it is not overcrowded
5 with birds. It is a concentration place for birds because
6 of habitat losses elsewhere.

7 MR. OSIAS: In fact, could you have answered my
8 question yes or no, no, it is not over crowded with birds.
9 Let's use that as a guideline.

10 In Exhibit 31, which is your -- actually, is it a paper
11 or is it just a text that you are going to give as a speech?

12 DR. FRIEND: It is a text that I will transfer into a
13 paper.

14 MR. OSIAS: You are going to give that next month or
15 deliver that next month?

16 DR. FRIEND: That is correct.

17 MR. OSIAS: So it is relatively current?

18 DR. FRIEND: That is correct. It is marked draft
19 because it's initial thoughts.

20 MR. OSIAS: Are those initial thoughts not developed
21 enough for us to give them any weight?

22 DR. FRIEND: You may give them as much weight as you
23 wish.

24 MR. OSIAS: You expect to do substantial revisions
25 between now and June 6th?

1 DR. FRIEND: No. What I expect to do is document the
2 statements in the published version with literature
3 citations that support my positions.

4 MR. OSIAS: But for that it is substantially complete?

5 DR. FRIEND: Yes, it is.

6 MR. OSIAS: You would agree, I take it, that despite
7 the abundance of fish and birds at the Salton Sea that the
8 Salton Sea is severely stressed as an environment?

9 DR. FRIEND: Yes, as are virtually every wetland that I
10 put up there on the map, showing you the distribution of
11 bird disease throughout North America.

12 MR. OSIAS: I will try to let you know when I ask about
13 those other areas. We are under a time limit here.

14 The Salton Sea itself is a severely stressed
15 environment and it is one that is deteriorating, correct?

16 DR. FRIEND: It's one that has potential to deteriorate
17 significantly if some of the issues on the table take
18 place.

19 MR. OSIAS: So the statement that you say on Page 10 of
20 your exhibit, quote: Clearly the environmental quality of
21 this water body is deteriorating.

22 Is that accurate? It should say it has the potential
23 to deteriorate?

24 DR. FRIEND: No. It's been deteriorating since
25 previous times as I displayed in the pattern of disease that

1 has occurred through the 1920s to the present.

2 MR. OSIAS: But you dispute that it currently is
3 deteriorating.

4 DR. FRIEND: It's a relative term, relative to what
5 time frame.

6 MR. OSIAS: I am reading your paper which is going to
7 be delivered in about a week that says clearly the
8 environmental quality of this water body is deteriorating.
9 I am trying to confirm that that is, in fact, what you
10 think.

11 DR. FRIEND: That is correct because salinity is
12 continuing to go up.

13 MR. OSIAS: Thank you.

14 You also state that the evidence of this severely
15 stressed environment is seen as massive fish kills, frequent
16 algal blooms and a high frequency and severity of avian
17 mortality events, correct?

18 DR. FRIEND: That is correct.

19 MR. OSIAS: That is an accurate portrayal of the Sea
20 today?

21 DR. FRIEND: That is correct.

22 MR. OSIAS: You are familiar, probably you and Dr.
23 Barnum -- is that --

24 DR. BARNUM: Yes.

25 MR. OSIAS: -- with the strategic science plan, Salton

1 Sea restoration project dated 2000?

2 DR. FRIEND: Yes.

3 MR. OSIAS: You are familiar with this, Dr. Friend?

4 DR. FRIEND: Yeah. I'm not sure what the document is.

5 MR. OSIAS: I am going to approach just so you can see
6 it.

7 That look like something you have seen?

8 DR. FRIEND: Absolutely.

9 MR. OSIAS: You say absolutely because, in fact, I
10 think you were in charge of that subcommittee at that time?

11 DR. FRIEND: Yes.

12 MR. OSIAS: Since the address for it is Middleton,
13 Wisconsin, I presume that is also where you work?

14 DR. FRIEND: I have spent most of my time at the Salton
15 Sea. My official duty station was Wisconsin, but 70 percent
16 of my time was spent at the Salton Sea.

17 MR. OSIAS: Now, this January 2000 strategic science
18 plan states on Page 1-7, which is in the introduction to the
19 following statement, quote: The large scale bird die-offs
20 are killing substantial segments of some of the migratory
21 bird populations that use the Sea. Examples include the
22 1992 loss of approximately 150,000 eared grebes,
23 approximately 7 percent of the North America population of
24 the species.

25 You agree with that statement?

1 DR. FRIEND: Absolutely.

2 MR. KIRK: Could you provide the document in question
3 to the witness to put that paragraph in context?

4 MR. OSIAS: No. I only have one, so I will read the
5 sentence and he can tell me if he disagrees with it. Then I
6 will give it to, if you like, and you can redirect him.

7 The next sentence says: The cause of that mortality
8 and that for subsequent eared grebe mortalities at the Sea
9 remains unknown.

10 Do you agree with that statement?

11 DR. FRIEND: Yes and no. And the reason for my
12 response is within the week I have reviewed a paper written
13 by scientists at our center and other places discussing
14 those mortalities and their causes. So there will shortly
15 be a manuscript in the scientific literature that provides
16 comment relative to both the significance of the events and
17 the causes of that mortality.

18 MR. OSIAS: Research continues, and we now more today
19 or will soon in the published sense than when this was
20 written in 2000, right?

21 DR. FRIEND: Absolutely.

22 MR. OSIAS: The next sentence reads: During 1996 an
23 unprecedented outbreak of Type C avian botulism in fish
24 eating birds killed more than 15,000 birds.

25 That is a true statement?

1 DR. FRIEND: That is true statement, but it is out of
2 context in the way it has been stated. It is unprecedented
3 because Type C avian botulism typically does not impact fish
4 eating birds. It is not unprecedented because of the
5 magnitude of the loss. As I pointed out in my earlier
6 testimony, avian botulism single events have killed more
7 than a million birds.

8 MR. OSIAS: So what is unusual is who it killed not how
9 many?

10 DR. FRIEND: No. Well, who meaning the pelican fish
11 eating birds.

12 MR. OSIAS: Again, not the magnitude, just the --

13 DR. FRIEND: That is correct.

14 MR. OSIAS: The next sentence reads: Approximately 15
15 to 20 percent of the western population of white pelicans
16 died during this event.

17 You agree with that statement?

18 DR. FRIEND: That is the projections that were given at
19 that time.

20 MR. OSIAS: You haven't revised those since 2000?

21 DR. FRIEND: No.

22 MR. OSIAS: The next sentence reads: More than 1000
23 California brown pelicans were also affected, making this
24 the largest, single loss from disease of an endangered
25 species.

1 Is that a true statement?

2 DR. FRIEND: That is a true statement.

3 MR. OSIAS: The next sentence reads: These events were
4 followed by the first occurrence of New Castle disease in
5 wild birds west of the Rocky Mountains.

6 Do you agree with that?

7 DR. FRIEND: Absolutely. And as I pointed out before
8 New Castle disease is an emerging disease starting in 1992
9 in cormorants in Canada and has been sweeping westward and
10 quite frankly has nothing to do with the Salton Sea other
11 than the are cormorants there.

12 MR. OSIAS: The next sentence reads: Virtually the
13 entire production of double-crested cormorants hatched on
14 Mullet Island died from New Castle disease during 1997.

15 Is that an accurate statement?

16 DR. FRIEND: That is correct, and it is consistent
17 with the appearance of that disease in the Great Lakes and
18 in Canada and other places where it occurs.

19 MR. OSIAS: And the next sentence reads: A similar
20 event assumed to be New Castle disease occurred the
21 following year.

22 Has there been any confirmation that it was, in fact,
23 New Castle disease?

24 DR. FRIEND: I believe -- I'd have to go back and check
25 our records, but I think conventional wisdom says it was New

1 Castle disease.

2 MR. OSIAS: The next sentence reads: These and other
3 diseases diagnosed as causes of bird mortality at the Sea
4 present an unusual array of recurring die-offs for a single
5 location.

6 Is that a true statement?

7 DR. FRIEND: That is a true statement. That is why we
8 are working on the issue.

9 MR. OSIAS: You described in Exhibit 31 that increasing
10 salinity, selenium health advisories, major fish die-offs
11 and the economic troubles of a developer caused the collapse
12 of the Salton Sea as a recreation and vacation destination.

13 Do you recall that testimony?

14 DR. FRIEND: That is reporting what is reported in the
15 literature.

16 MR. OSIAS: Then you said: Sportfishing, bird
17 watching, hunting and camping persisted, but at greatly
18 reduced levels.

19 DR. FRIEND: That is correct. We went from 600,000
20 visitors use days at the Salton Sea State Park down to about
21 275 currently.

22 MR. OSIAS: I think, but correct me if I get this
23 wrong. I think you opined that a decrease in elevation,
24 which would, therefore, have an increase in salinity, would
25 be bad, to use a nontechnical term, for the avian

1 population.

2 Is that correct?

3 DR. FRIEND: It would be devastating.

4 MR. OSIAS: The current elevation would be better?

5 DR. FRIEND: What would be better is maintaining
6 conditions that will not facilitate the salinity to go up
7 and take out the fish populations.

8 MR. OSIAS: That is not the natural conditions today.
9 When I say natural, I'm including agricultural drain flows,
10 et cetera. The salinity is going up already, correct?

11 DR. FRIEND: Yes, the salinity is going up.

12 MR. OSIAS: So describing for me a better circumstance
13 where salinity doesn't go up is not my question. My
14 question was: Is the current elevation better than a
15 declined elevation?

16 DR. FRIEND: Yes.

17 MR. OSIAS: Even though you acknowledged in your report
18 that the current elevation is a result of rise in a flat
19 topography which inundated the shoreline and many
20 recreational facilities?

21 DR. FRIEND: Yes.

22 MR. OSIAS: So the flooding consequences of the rise in
23 elevation don't warrant a reduction in elevation if that
24 would come at the expense of the birds?

25 DR. FRIEND: Repeat the question.

1 MR. OSIAS: It would be better to preserve the current
2 elevation in its flooding height than to reduce it and
3 injure the birds?

4 DR. FRIEND: From a bird standpoint in terms of
5 conservation of birds, the current level is satisfactory to
6 reducing that. Elevation in terms of flooding is a function
7 of time. Historic bodies of water here were above sea
8 level. The original Salton Sea was 83 feet high. I'm not
9 sure what the significance of elevation is in terms of the
10 conservation of the birds. The concern is losing water at a
11 rate that allows salinity to spike and remove the food
12 base. That is the context in which all statements are made
13 relative to the conservation of the avifauna of the Salton
14 Sea.

15 MR. OSIAS: In expressing your opinion here today you
16 were focused solely on avian concerns and not on human
17 concerns that might be impacted by flooding; is that right?

18 DR. FRIEND: My testimony here today is strictly on
19 wildlife disease issue and avian concentration and no other
20 aspect.

21 MR. OSIAS: In your prior answer I think you described
22 historic elevations. In fact, the Salton Sea I think you
23 testified went from 80-something feet deep to 28 feet deep
24 by 1925; is that right?

25 DR. FRIEND: That is correct.

1 MR. OSIAS: I take it that you would opine that the
2 salinity in that remaining body of water was much more
3 saline than it was when it was 80 feet deep?

4 DR. FRIEND: These bodies of water all started out as
5 freshwater because it was Colorado River inflow. And as
6 evaporation took place, salinity continued to increase.
7 That is the pattern of water in this area.

8 So I am not following your question in terms of its
9 point.

10 MR. OSIAS: Well, it actually was sort of simple,
11 although you are a bit suspicious of my question, I'm just
12 getting you to confirm that the remaining body of water in
13 1925 was much more saline than the much larger body of water
14 in 1907.

15 DR. FRIEND: Certainly.

16 MR. OSIAS: That was easy.

17 And similarly you described in your testimony events
18 prior to this recent Colorado River spillage that recreated
19 the Salton Sea, historic Lake Cahuilla and its salinity and
20 then it disappeared.

21 You remembering describing that in Exhibit 31?

22 DR. FRIEND: The draft manuscript that you are
23 referring to is a presentation before a body that has no
24 knowledge of the Salton Sea. And so that background
25 information is relevant to that meeting. It is not relevant

1 to my testimony here.

2 MR. OSIAS: But it is not intended to be false?

3 DR. FRIEND: Is not false.

4 MR. OSIAS: I want to confirm that. Therefore, your
5 opinion that there are extensive salt flats existing in the
6 Imperial Valley as a result of the historic decline in Lake
7 Cahuilla and other contracting events is a true statement?

8 DR. FRIEND: That is not what the statement says. What
9 the statement says is that dried lake beds of this region
10 typically have large salt flats because of the evaporation
11 processes that have taken place.

12 MR. OSIAS: So you weren't describing the Imperial
13 Valley when you wrote: The volume of water lost through
14 evaporation result in dry lake beds of the area having
15 extensive salt flats?

16 DR. FRIEND: I was talking about the area in general.
17 I was not specifically focused on Imperial Valley.

18 MR. OSIAS: So in general, does that mean California?

19 DR. FRIEND: Southern California, the desert
20 environment.

21 MR. OSIAS: From ocean to Arizona?

22 DR. FRIEND: From Death Valley to dry lake beds that I
23 see up at Bristol and other places like that.

24 MR. OSIAS: Other than a reference to the Salton Trough
25 and Imperial and Coachella Valleys in your Exhibit 31, is

1 there any reference to any other desert in California?

2 DR. FRIEND: I'm sorry, I don't understand what you
3 mean.

4 MR. OSIAS: Do you have Exhibit 31 in front of you?

5 DR. FRIEND: Certainly or I can find it. This
6 presentation is above the Salton Sea.

7 MR. OSIAS: Thank you. I've not asked a question yet.
8 I want to make sure you have it.

9 Why don't you turn to page -- start on Page 3, if you
10 like. You can look through your discussion and tell me
11 whether you have discussed the salt flats in connection with
12 anything other than Imperial and Coachella Valleys.

13 DR. FRIEND: I can tell you that in the context in
14 which I wrote the paper, the salt flats refer to the broad
15 area that I just commented on before. They are not specific
16 to the Coachella and Imperial Valleys. That is the context
17 it which I made the comments, wrote the paper.

18 MR. OSIAS: So two sentences before when you talk about
19 the salinity coming from the Colorado River input, we should
20 assume you thought that that flowed into Death Valley at
21 some point?

22 DR. FRIEND: This is a historic perspective of
23 literature that exists in terms of this particular water
24 body. The inflow is the Colorado River. The phenomenon of
25 these water bodies drying up is not unique to the Colorado

1 River.

2 MR. OSIAS: Should we believe that your opinion is that
3 there are salt flats in the Imperial and Coachella Valley or
4 not?

5 DR. FRIEND: The only thing I'm referring to in terms
6 of the salt flats are on dry lake beds, period.

7 MR. OSIAS: In the Coachella and Imperial Valleys or
8 not? Are there any? Do you know?

9 DR. FRIEND: Certainly. Bristol Lake is in -- I'm not
10 -- I'd have to look at a map and see where some of these
11 are. But I am thinking of specific areas that I have been
12 that have extensive salt flats that are not here at the
13 Salton Sea.

14 MR. OSIAS: My question, you spent an extensive amount
15 of time in the area of the Salton Sea, have you not?

16 DR. FRIEND: Yes, I have.

17 MR. OSIAS: Already said that.

18 Have you seen any extensive salt flats in the Imperial
19 or Coachella Valleys? Yes or no.

20 DR. FRIEND: I don't know where some of these other
21 areas lie. That is my point.

22 CHAIRMAN BAGGETT: He asked for a yes or no.

23 MR. OSIAS: Do you know where the Imperial Valley is?

24 DR. FRIEND: I know where the border is between
25 Imperial and Riverside Valley when I drive down to the Sea,

1 but I really don't -- I couldn't describe the borders of
2 where the Imperial Valley ends and where some of these other
3 counties are. I have no reason to know that.

4 MR. OSIAS: You can't tell me if there is any salt
5 flats in Imperial Valley, you don't know?

6 DR. FRIEND: There are salt flats on the Salton Sea.

7 MR. OSIAS: Not on the water, itself?

8 DR. FRIEND: There are salt flats on portions of the
9 Salton Sea.

10 MR. OSIAS: Where it is under water or where it is --

11 DR. FRIEND: Where it is dry.

12 MR. OSIAS: So that is adjacent to the Salton Sea?

13 DR. FRIEND: That is part of the system of the Sea.

14 The sea is not defined as simply a water edge. We talk
15 about an ecosystem. So we go back to the shoreline in terms
16 of vegetation.

17 MR. OSIAS: You have seen salt flats near the Salton
18 Sea?

19 DR. FRIEND: There are extensive salt flats along the
20 Wister Unit.

21 MR. OSIAS: Thank you.

22 Dr. Barnum, the Salton Sea ecosystem currently is not
23 preventing disease outbreaks based on research to date; is
24 that correct?

25 DR. BARNUM: I don't know of any ecosystem that

1 prevents disease outbreaks including the Salton Sea.

2 MR. OSIAS: The effort to restore the Salton Sea is an
3 attempt not to maybe eliminate disease outbreaks but reduce
4 them; is that more fair?

5 DR. BARNUM: Yes, it is fair.

6 MR. OSIAS: And that would be to reduce it below its
7 current situation with respect to disease?

8 DR. BARNUM: That would be my understanding.

9 MR. OSIAS: The Salton Sea Science Office that produced
10 this strategic science plan, you are familiar with this
11 plan, are you not?

12 DR. BARNUM: I am familiar with the plan, and the plan
13 is not a product of the Science Office, per se. At that
14 time that was a science subcommittee. It was a product of
15 that science subcommittee.

16 MR. OSIAS: Did you have any input on that report?

17 DR. BARNUM: Again, in an indirect way I participated
18 in a team of experts from U.S. Geological Survey that
19 provided a foundation, I think guiding advice, for the
20 formation of that document.

21 MR. OSIAS: I want to show you Page 2-5. The first
22 question is: Have you ever seen this before?

23 DR. BARNUM: I have seen written different versions of
24 it, yes.

25 MR. OSIAS: There is a table at the bottom -- that is

1 probably not right; it is a graph -- at the bottom which has
2 on one axis the salinity. I can't remember whether it is in
3 parts per thousand.

4 DR. BARNUM: Parts per million.

5 MR. OSIAS: Along the horizontal axis it is years,
6 correct?

7 DR. BARNUM: It says years from pond completion.

8 MR. OSIAS: The ponds that they are talking about are
9 the evaporation ponds that are at least being considered by
10 the restoration project; is that --

11 MR. KIRK: Mr. Chairman, I object. This is beyond the
12 scope of Dr. Barnum's rebuttal.

13 MR. OSIAS: I was going to get to concentration of
14 selenium in the ponds, which I thought was part of his
15 testimony.

16 MR. KIRK: I didn't hear the word "selenium" before.

17 CHAIRMAN BAGGETT: Proceed.

18 MR. OSIAS: I've got to get there. I'm describing
19 first the graph.

20 CHAIRMAN BAGGETT: I understand.

21 MR. OSIAS: Is that what it depicts, the time to get
22 to certain salinity levels in those ponds?

23 DR. BARNUM: These are projections, yes.

24 MR. OSIAS: I said predict, maybe project is more
25 accurate.

1 As water evaporates, the salt is left behind, correct,
2 if it was suspended in the water?

3 DR. BARNUM: Correct, some of it is.

4 MR. OSIAS: The selenium also if it was in the water?

5 DR. BARNUM: To some extent it is.

6 MR. OSIAS: So if we started with one part per billion
7 and we evaporated it down to a solid, there would be more
8 than one part per billion in the remaining salt?

9 DR. BARNUM: If you had -- if everything was contained
10 within one single pond system.

11 MR. OSIAS: And if you move water as it gets more salty
12 into different ponds that have, you know, become more
13 concentrated as you go, would the salinity concentrate just
14 like the salt?

15 DR. BARNUM: You used the same word to describe both
16 things. You said salinity concentrate as --

17 MR. OSIAS: I'm sorry, you're right.

18 Would the selenium concentrate like the salt
19 concentrates?

20 DR. BARNUM: Our existing research tends to indicate
21 that it does not act like salinity, like a salt compound
22 because of biological activity.

23 MR. OSIAS: And at what level does biological activity
24 end in these salt ponds, according to that chart?

25 DR. BARNUM: It doesn't address that issue. It has an

1 upper limit for artemia.

2 MR. OSIAS: How far out is that projected?

3 DR. BARNUM: Roughly 200 parts per thousand.

4 MR. OSIAS: How many years is that?

5 DR. BARNUM: According to this chart, roughly six to
6 seven years.

7 MR. OSIAS: Is that brine shrimp, is that what you
8 said?

9 DR. BARNUM: Yes.

10 MR. OSIAS: Does that take in selenium?

11 DR. BARNUM: Yes, it does. It is a filter feeder.

12 MR. OSIAS: After six or seven years there would be no
13 more biological removal of the selenium?

14 DR. BARNUM: No, that is not accurate.

15 MR. OSIAS: There are species beyond the brine shrimp
16 that do that?

17 DR. BARNUM: There are a lot of bacteria, microbes,
18 that do uptake the selenium.

19 MR. OSIAS: If you're building a pond, even if it is
20 increasing in salinity, it may not be increasing in selenia;
21 is that the conclusion that we should draw?

22 DR. BARNUM: If you are building a pond as a single
23 pond system, what you start with is what you're going to
24 concentrate is that they all remain in that one pond unit.
25 If this table represents the extent of the pond, it's all

1 going to remain there. It's going to evapoconcentrate and
2 also bioconcentrate.

3 If on the other hand, you build a typical, I'm going to
4 say if there is such a thing as typical, typical evaporation
5 pond system, it is multi-celled, you start out with running
6 water into one cell. Water from that goes to another cell,
7 sequentially in order to try to evaporate as much water and
8 concentrate the salts. In a multi-celled evaporation pond
9 system, selenium does not concentrate, evapoconcentrate or
10 bioconcentrate the same way that salinity does. The
11 salinity does not bioconcentrate necessarily.

12 MR. OSIAS: For a fish pond proposal, if it went to a
13 multi-pond approach and flowed water as you described, they
14 could avoid the concentrations of selenium, either in the
15 water or in the biological species living in the ponds; is
16 that right?

17 DR. BARNUM: You're -- the assumption that you are
18 going is you are going to have an evaporation pond system
19 concept as a flow through system for the fish ponds? I am
20 not clear what you are talking --

21 MR. OSIAS: My concept was that you would use this
22 multi-celled approach and combine some of the ponds with
23 places for hatchery fish to live. If you did that, you
24 could avoid selenium concentrations in those ponds, could
25 you not?

1 DR. BARNUM: There may be a way to do it. You may be
2 able to avoid it. The problem with that approach is that
3 you then trade off where you have areas of very high
4 selenium concentration. That then has to be dealt with.

5 MR. OSIAS: Thank you.

6 You can keep that if you want to redirect.

7 CHAIRMAN BAGGETT: San Diego.

8 MS. HASTINGS: Yes.

9 ---oOo---

10 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

11 BY SAN DIEGO COUNTY WATER AUTHORITY

12 BY MS. HASTINGS

13 MS. HASTINGS: Hi, gentlemen. My name is Stephanie
14 Hastings. I represent San Diego County Water Authority.
15 Two specific questions for Dr. Barnum.

16 Dr. Barnum, you identified the fact that you are aware
17 of the Environmental Impact Report for this project; is that
18 correct?

19 DR. BARNUM: I am aware of it.

20 MS. HASTINGS: You also testified to some extent about
21 the HCP approach one; is that correct?

22 DR. BARNUM: Right. I am familiar with the broad
23 concept.

24 MS. HASTINGS: Are you also aware that the
25 Environmental Impact Report always provides an analysis of

1 an alternative approach, approach two?

2 DR. BARNUM: I am aware of an approach two. I'm not
3 quite certain on its -- what it contains.

4 MS. HASTINGS: That is fine.

5 Are you also aware that the Environmental Impact Report
6 provides alternatives to the proposed project as well?

7 DR. BARNUM: I know there are alternatives. I have not
8 delved into all of them.

9 MS. HASTINGS: That's all.

10 Thank you very much.

11 CHAIRMAN BAGGETT: Thank you.

12 CRIT, not hear.

13 PCL, Ms. Douglas.

14 ----oOo----

15 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

16 BY PLANNING AND CONSERVATION LEAGUE

17 BY MS. DOUGLAS

18 MS. DOUGLAS: Good afternoon -- good morning.

19 Mr. Pelizza, if I can start with a couple questions for
20 you.

21 Can you please pull out, I think it is, Exhibit 26, the
22 chart that Mr. Osias had you go through.

23 MR. PELIZZA: Yes.

24 MS. DOUGLAS: You have it there?

25 MR. PELIZZA: Yes.

1 MS. DOUGLAS: I believe Mr. Osias asked you to compare
2 the numbers of sick brown pelicans in 1996 and 2000; is that
3 right?

4 MR. PELIZZA: That's correct.

5 MS. DOUGLAS: And I guess what I'm reading here is in
6 1996 there were 905 sick pelicans and in 2000, 994; is that
7 correct?

8 MR. PELIZZA: That's correct.

9 MS. DOUGLAS: Dead brown pelicans in '96, you've got
10 1,129, right?

11 MR. PELIZZA: That's correct.

12 MS. DOUGLAS: In 2000 you have 317, correct?

13 MR. PELIZZA: That's also correct.

14 MS. DOUGLAS: So there are three and a half times as
15 many dead brown pelicans in '96 as in 2000?

16 MR. PELIZZA: Yes.

17 MS. DOUGLAS: Then when we look at the total affected
18 birds column, you have 10,873 in 1996, right?

19 MR. PELIZZA: Yes.

20 MS. DOUGLAS: In 15, 1,502 in 2000, right?

21 MR. PELIZZA: That's correct.

22 MS. DOUGLAS: That is a pretty big difference. Can you
23 explain the difference between '96 and 2000?

24 MR. PELIZZA: The primary difference in the totals that
25 you are seeing is that in 1996 -- actually, if you look at

1 the years of 1994 and 1995, there were a few birds, less
2 than 120 all totaled for the two years, which didn't really
3 indicate that there was a potential for an extensive disease
4 die-off. So in 1996 when pelicans were discovered dying, we
5 were basically reactive to a disease outbreak that was
6 already occurring.

7 Since that time, the refuge and the other cooperators
8 on the Sea go out on routine patrols and are protective in
9 looking for sick and dead birds. So it is primarily through
10 this effort of being out there on the Sea on a regular basis
11 that we are finding birds before they are dying.

12 MS. DOUGLAS: There is also a big difference between
13 white and brown pelicans here, right?

14 MR. PELIZZA: Yes, there is.

15 MS. DOUGLAS: I guess in 1996 it says that 8,539 white
16 pelicans were dead at the Sea?

17 MR. PELIZZA: That's correct.

18 MS. DOUGLAS: In 2000 that number is 88; is that
19 correct?

20 MR. PELIZZA: That's also correct.

21 MS. DOUGLAS: Is it fair to say that the bird die-off
22 affected white pelicans much more than brown pelicans in
23 '96?

24 MR. PELIZZA: In '96 it appears to be the case.

25 MS. DOUGLAS: In 2000 the death from white pelicans are

1 about double what they were in '99, but less than they were
2 in '98 and much less than in '97. Is that fair?

3 MR. PELIZZA: Could you restate again? I'm having
4 trouble following.

5 MS. DOUGLAS: In 2000 the death from white pelicans are
6 88, right?

7 MR. PELIZZA: Uh-huh.

8 MS. DOUGLAS: Which is about double what is in '99 and
9 2001, right?

10 MR. PELIZZA: That's correct.

11 MS. DOUGLAS: But much less in 1997, for example, which
12 is 304?

13 MR. PELIZZA: Yes.

14 MS. DOUGLAS: If we can leave the chart, I notice that
15 you submitted some descriptions of your wildlife disease
16 response program. I was hoping to ask you to tell us a
17 little more about that.

18 When was this Salton Sea Refuge established?

19 MR. PELIZZA: The Nation Wildlife Refuge was
20 established in 1930.

21 MS. DOUGLAS: I see here there is a long history of
22 botulism at the Sea. When does that history begin?

23 MR. PELIZZA: I believe records on dead birds have been
24 collected from refuge files and efforts since its
25 inception. The first diagnosis of botulism at the Salton

1 Sea, I assume, goes back that far, but Dr. Friend maybe
2 would have a better idea.

3 MS. DOUGLAS: Dr. Friend, you had said --

4 DR. FRIEND: The first documentation of avian botulism
5 or any disease problem at the Salton Sea is from 1917. The
6 reference is Kalmbach, who was the Bureau biological survey,
7 U.S. Department of Agriculture guru of avian botulism, and
8 that predates the refuge by more than a decade.

9 MS. DOUGLAS: Just to clarify, the exhibit I'm going
10 through, Mr. Kirk, do you remember the exhibit number,
11 because this is submitted in your materials but I brought it
12 up without --

13 MR. ROSSMANN: Twenty-seven.

14 MR. KIRK: Twenty-seven.

15 MS. DOUGLAS: So in the section that goes -- that talks
16 about botulism in pelicans, it says here that refuge reports
17 pre 1996 do not identify a problem with botulism in
18 pelicans. Is that true?

19 MR. PELIZZA: That's correct, yes.

20 MS. DOUGLAS: Type C botulism was identified as a
21 causative agent.

22 Dr. Friend, you had said that that was rare or
23 unprecedented?

24 DR. FRIEND: Yes. And it's -- you need to understand
25 that avian botulism is the world's largest killer of

1 waterbirds. That it is an environmental problem that has
2 expanded greatly in recent years, that historically its
3 origin is here in California and some other western states,
4 but it is now a worldwide issue; the unprecedented comment
5 which was raised before was the fact that the typical Type C
6 botulism cycle is a maggot driven cycle in which birds
7 consume toxic maggots that have been ingested with the toxin
8 on bird carcasses that they feed on.

9 What is unusual with the pelican events is that
10 pelicans don't eat dead things, and that what we have is
11 apparently a new relationship, the evolution of a new
12 disease process that is as a result of interaction with a
13 particular fish species, tilapia, and the evidence is
14 continuing to solidify at this point as research continues
15 into this. Live tilapia are very susceptible to this
16 toxin. They become sick and selectively picked off by the
17 pelicans. And since this is the most toxic compound known,
18 it doesn't take very much toxin to kill a bird.

19 And so that process is what is going on, and I guess
20 ultimately the control of this disease, in fact, elimination
21 of botulism within pelican populations may, in fact, be tied
22 to the tilapia population.

23 MS. DOUGLAS: Mr. Pelizza, in terms of the post 1996
24 response efforts, it says here this was a multi-agency
25 effort.

1 What agencies are involved?

2 MR. PELIZZA: The California Department of Fish and
3 Game, the Salton Sea Authority and the U.S. Fish and
4 Wildlife Service are the three agencies.

5 MS. DOUGLAS: How would you describe the success that
6 you have had in rehabilitation?

7 MR. PELIZZA: It is improving on an annual basis, and
8 the success when compared to 1996 is considerable.

9 MS. DOUGLAS: Then you have five rehabilitation
10 facilities. What are they? What do they do?

11 MR. PELIZZA: The care that we provide for pelicans at
12 the refuge is mostly for stabilization. They spend no more
13 than 24 hours in our care. At that point we bring them to
14 one of those five wild bird rehabilitation facilities that
15 are set up for the long-term care of all types of avian bird
16 species, but have agreed to cooperate with us on our disease
17 or botulism outbreaks of pelicans.

18 MS. DOUGLAS: Dr. Friend, I was interested by quite a
19 lot of your testimony, actually. Let's start with the
20 National Wildlife Health Center. Can you tell us a bit
21 about its mission?

22 DR. FRIEND: The mission of the National Wildlife
23 Health Center was originally focused on National Wildlife
24 Refuges under the Department of Fish and Wildlife Service.
25 That was to provide diagnostic support and response and

1 training to allow wildlife managers, not only within the
2 federal system but at the request of the state to work with
3 states and other countries in minimizing impact from
4 disease. I stress minimizing the impact from disease
5 because we do not live in an autobiotic world, nor would
6 that be desirable.

7 Disease is a component of the natural landscape, and
8 what we strive to do at the center is to record, respond to,
9 conduct research to develop better understanding of ecology
10 of those diseases so that intervention can be more
11 effective, and we can place the wildlife disease activities
12 more in a centers for disease control for human's type of
13 perspective as opposed to reactionary, picking up of bodies
14 and counting them.

15 MS. DOUGLAS: When was the National Wildlife Health
16 Center established?

17 DR. FRIEND: January 1975.

18 MS. DOUGLAS: Were there precipitating events that had
19 its --

20 DR. FRIEND: Yes. The precipitating events for the
21 National Wildlife Health Center was an introduction of an
22 exotic virus into the Lake Andrews National Wildlife Refuge
23 that killed 40 percent of the wintering mallard population.
24 That disease was duck plague. As a result of that event, a
25 blue ribbon committee was assembled, government, NGOs and

1 others and to evaluate the situation. And the outcome was
2 that the Fishing and Wildlife Service was directed to
3 develop a program to better be able to address these types
4 of events, and I was given the task of developing that
5 program and directed it for the first 23 years of its
6 existence.

7 MS. DOUGLAS: So you've been at -- how long have you
8 been at the National Wildlife Health Center?

9 DR. FRIEND: January 1975 until Secretary Babbitt asked
10 me to deal with the Salton Sea situation in December '98, it
11 was.

12 MS. DOUGLAS: So you have been there literally since
13 the beginning?

14 DR. FRIEND: Yes. I was the first and only director
15 until very recently.

16 MS. DOUGLAS: In your work as director, did you have
17 the opportunity to learn a lot and to witness firsthand a
18 lot of the bird die-offs from around the world?

19 DR. FRIEND: Yes. I have been involved with disease
20 events in many countries and helped establish programs.
21 That is one of our roles, is training others. And worked to
22 establish disease programs in Russia, in India and then
23 worked in New Zealand and other countries that you will see
24 listed in my CV. I've got a very broad exposure on the
25 ground to a wide variety of disease events as well as

1 conducting my own research. And you will note from the CV
2 that I have published extensively in a broad spectrum of
3 wildlife health issues, including bench science as well as
4 review-type articles.

5 MS. DOUGLAS: When Secretary Babbitt sent you to work
6 on the Salton Sea issue, was that because of the die-offs at
7 the Sea?

8 DR. FRIEND: The die-offs at the Sea, in my opinion, of
9 what highlighted the charismatic mega fauna involved and the
10 pelicans and media coverage. The pelicans caused a lot of
11 attention. And the Secretary asked for my assistance, and I
12 didn't really know what I was getting into. It's been an
13 interesting challenge.

14 MS. DOUGLAS: Now, in your experience having studied
15 the issues of bird health and bird die-offs at the Salton
16 Sea and in seeing so many other similar events in the United
17 States and around the world, how does the Salton Sea -- how
18 do the health issues for birds at the Salton Sea compare to
19 other places in the world?

20 DR. FRIEND: As was pointed out by the gentlemen from
21 IID, they're unique in terms of the number of different
22 event statements that I made. But that is a reflection of
23 what is going on in the world. We don't see the Salton Sea
24 very unique in terms of the magnitude of losses. As I
25 indicated before, it pales compared to many other areas,

1 such as the Great Salt Lake and the Bear River Marshes which
2 is touted as one of the greatest birding areas in this
3 country.

4 I have spent many personal hours working on botulism at
5 the Bear River Marshes, but I have also, as I indicated
6 before, seen much larger events here in California than in
7 other areas. So from a magnitude of mortality, it's another
8 problem area among the many problem areas throughout the
9 world. And as I tried to indicate before, these problems
10 are occurring because of conditions that I won't repeat,
11 but given as testimony before.

12 But, again, going back to the mission of the center and
13 what the conservation community is trying to do is minimize
14 these impacts by addressing these problems more actively
15 than it has ever been done in the past.

16 MS. DOUGLAS: Before 1996 when you went to the Salton
17 Sea, had the National Wildlife Health Center established the
18 Salton Sea as any kind of priority or problem area?

19 DR. FRIEND: Yes, it had. Remember, given our mission
20 then, when critters die on various National Wildlife
21 Refuges, they usually end up on the postmortem or necropsy
22 tables in our center. And we are there to evaluate the
23 cause and give feedback to the field in terms of what the
24 issue is and how they might respond to it.

25 So as birds started to appear in the '80s, I actually

1 took a personal action of convening a small group in Madison
2 prior, as a result of, but prior to the project being
3 launched, to draw attention to the fact that we had some
4 issues that needed to be dealt with. So the center started
5 to become very actively involved in the late '80s, the late
6 '80s in terms of great mortalities at the Salton Sea.
7 Again, that is a reflection of what we were dealing with in
8 many others places. Not unique to the Sea.

9 MS. DOUGLAS: You had mentioned or talked a bit about
10 the history of some of these epidemics in birds, and you had
11 said this started in the '70s; is that right?

12 DR. FRIEND: The '70s, as I published several papers in
13 terms of emerging diseases, and the '70s is kind of the land
14 -- the baseline in terms of when things started to emerge.
15 And we could go through disease by disease, we don't have
16 time to do that. But 1970 we started to see major
17 outbreaks, such as avian cholera at Chesapeake Bay that
18 probably killed a hundred thousand birds on there. And as
19 we moved into the mid '70s, things continued to expand. And
20 as we moved into the '80s this acceleration was even more
21 prominent, and it is not just birds. It is all species, all
22 environments, everything from marine mammals to you name
23 it.

24 MS. DOUGLAS: Avian botulism, however, has been around
25 for longer?

1 DR. FRIEND: Avian botulism has been recognized since
2 about the turn of the 20th century.

3 MR. OSIAS: Mr. Chairman, we seem to be going over the
4 same ground.

5 CHAIRMAN BAGGETT: Please focus. We don't need a
6 discourse on his experience. I appreciate the expertise,
7 and you've come a long way, but that is not the focus.

8 MS. DOUGLAS: We have two more areas, actually.

9 CHAIRMAN BAGGETT: Please.

10 MS. DOUGLAS: Sure.

11 So it is around the turn of the century?

12 DR. FRIEND: Turn of the century.

13 MS. DOUGLAS: You said in your testimony that in, I
14 guess, 1917 and through the '20s when the Salton Sea got
15 particularly low, I guess got to its low point since it's
16 been created, that is when -- that is the first time that
17 there had been an avian botulism event at the Sea?

18 DR. FRIEND: 1917 was the first documented occurrence,
19 and the period of the mid '20s and '30s was a great
20 acceleration.

21 MS. DOUGLAS: How do you explain or how does the lower
22 sea levels at the Salton Sea contribute to that outbreak?

23 DR. FRIEND: Those outbreaks were different than the
24 current situation with pelicans. They were the classical
25 type sea maggot driven cycle. Avian botulism is an

1 environmental disease in which the spores are present in
2 wetlands throughout the world, and it requires specific --
3 but without getting into detail, requires specific physical
4 and environmental conditions for this disease to erupt.

5 One of the things that happens and has been associated
6 with declining water levels is the entrapment in small pools
7 and indentations in the floor of wetlands of invertebrates
8 that have the spores in their guts and the invertebrate
9 carcass per intake protein is another aspect. Invertebrate
10 carcasses tend to be the trigger in which the birds
11 encounter, usually with small shorebirds first, becoming
12 intoxicated by feeding on those invertebrates which become
13 entrapped with the receding water levels; and then when
14 those birds die and become fly blown, the maggot cycle
15 kicks in. That is a typical scenario we see in many
16 places.

17 MS. DOUGLAS: You have said that, at least with the
18 potential for the proposed project reducing inflows into the
19 Salton Sea, that the effects on bird population could be
20 devastating from a disease perspective; is that correct?

21 DR. FRIEND: That's correct. Because we are going to
22 further concentrate which facilitates the transmission of, I
23 wasn't thinking of avian botulism, I was thinking more in
24 terms of avian cholera and infectious disease that we know
25 from looking at the epidemiology of this disease that starts

1 in Northern California and moves down with the migration of
2 the birds.

3 MS. DOUGLAS: If large numbers of birds from great
4 diversity of species, we said over 400 species, at the
5 Salton Sea were exposed to a big epidemic of some sort,
6 whether it be avian cholera or something else, could that
7 impact bird populations throughout the Pacific Flyway or
8 North America?

9 DR. FRIEND: Absolutely. That is what is happening, of
10 course, in terms of why diseases expand. If you recall the
11 map showing the bird banding, records of this interchange
12 and carriers that become shedders at a later point as the
13 environmental stresses at that location precipitate the
14 organism. That is what is happening all over the place.

15 MS. DOUGLAS: That was my last question.

16 Thank you.

17 CHAIRMAN BAGGETT: Thank you.

18 Sierra Club. Anybody here?

19 Audubon.

20 National Wildlife.

21 Mr. Fletcher, Defenders of Wildlife.

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CROSS-EXAMINATION OF SALTON SEA AUTHORITY

BY DEFENDERS OF WILDLIFE

BY MR. FLETCHER

MR. FLETCHER: Good morning, Mr. Pelizza, Dr. Barnum, Dr. Friend.

My name is Brendan Fletcher. I am with Defenders of Wildlife. I have a few questions for -- I think they may be most appropriately directed to you, Dr. Barnum. Because of your previous position, perhaps you as well, Dr. Friend. They have to do with the origin, mission, nature of the Salton Sea Science Office.

The Salton Sea Science Office was established in 1998; is that correct?

DR. BARNUM: Actually the current rendition of the Salton Sea Science Office was established roughly in 2000, in the fall of 2000. What you are referring to is the Salton Sea Science Subcommittee was established in about 1998.

MR. FLETCHER: How is the subcommittee different from the Science Office?

DR. BARNUM: The Science Office is basically the evolutionary forum without a lot of underlying committees and overlying committees. So it's transformed itself from a large committee, a large operation with lots of additional committees above and below it to basically a three-person

1 operation: a chief scientist, a science coordinator and an
2 administrative person.

3 MR. FLETCHER: Who are the members of, some of the
4 Salton Sea Science Committee? And you don't need to be all
5 inclusive. I'm just trying to get a flavor of the kinds of
6 members who are on that.

7 MR. OSIAS: Mr. Chairman, what is the relevance of
8 this?

9 MR. FLETCHER: His credibility, witness', credibility
10 of the product of the Salton Sea Science Office. I am not
11 going to -- basically, Dr. Barnum testified that the Salton
12 Sea Science Office has its products peer reviewed. I am
13 just trying to work backwards from that to understand the
14 peer review process, in other words, the foundation for the
15 Salton Sea Science Office, what is your process. And what
16 are the results of that peer review at the end.

17 MR. OSIAS: There is no evidence submitted in rebuttal
18 by the Salton Sea Science Office. So on that basis I would
19 object. What is the relevance?

20 CHAIRMAN BAGGETT: I'll sustain that. Restate, come up
21 with some reasoning.

22 MR. FLETCHER: Perhaps I am misrecalling the testimony.
23 I believe that Dr. Barnum testified that the Salton Sea
24 Science Office, all products of that have been peer reviewed
25 and that the products related to the issue of wildlife

1 disease.

2 Is that correct or am I misrecalling the testimony?

3 CHAIRMAN BAGGETT: But you are trying to go backwards
4 from that.

5 MR. FLETCHER: I can just ask the question directly. I
6 was just trying to understand the nature of the Science
7 Office.

8 CHAIRMAN BAGGETT: Objection was relevancy and I would
9 agree. I don't see where it is relevant to this particular
10 issue. I don't think that wasn't his testimony.

11 MR. FLETCHER: I'm sorry, which wasn't his testimony?
12 I was just trying to figure out --

13 CHAIRMAN BAGGETT: The peer review process and how he
14 got there. The product -- ask the question on the evidence
15 submitted.

16 MR. FLETCHER: I will try to do my best. I am not sure
17 I understand. I was trying to get directly to the peer
18 review process.

19 You stated first of all that the products of the Salton
20 Sea Science Office are peer reviewed; is that right?

21 DR. BARNUM: Yes, I did.

22 MR. FLETCHER: By whom? What is the process for that?

23 DR. BARNUM: There are several different lines of
24 protocol that we go through. First, we try to get the
25 people that we have invited, the experts at that level, to

1 give us names, some contacts, especially if it is outside of
2 our immediate areas of expertise. We ask for expert
3 comments, basically, recommendations of other people that
4 could provide a level of peer review.

5 MR. OSIAS: Mr. Chairman, I am going to go back to the
6 objection. If we look at Dr. Barnum's outline of what he is
7 going to talk about, the Science Office isn't one of them.
8 We did have Mr. Kirk ask him if the Science Office or some
9 group did the Pacific Institute and he answered to that.
10 And he addressed specifically that he invited 30 to 40
11 people and how that report was put together.

12 CHAIRMAN BAGGETT: I understand.

13 MR. OSIAS: That seems to be a fair inquiry, but in
14 general what the Science Office does and how they put out
15 papers --

16 CHAIRMAN BAGGETT: I would --

17 MR. FLETCHER: I will move on.

18 CHAIRMAN BAGGETT: Move on please.

19 MR. FLETCHER: Let me ask you a couple questions about
20 your testimony related to selenium.

21 In doing so I am going to refer to the Draft
22 Environmental Impact Report/Environmental Impact Statement
23 for the transfer project which we have been calling IID
24 Exhibit 55. When I talk about IID Exhibit 55 that is the
25 EIR.

1 You stated that the preferred alternative will result
2 in increases in selenium concentrations in IID's drain and
3 Exhibit 55 actually states that as well, correct?

4 DR. BARNUM: I have affirmed that that is what I had
5 read in the document.

6 MR. FLETCHER: Are you aware that the document states
7 that there is -- IID Exhibit 55 states that there is no
8 reasonable mitigation available to reduce the concentration
9 of selenium in the drain? That would be the increased
10 concentration --

11 DR. BARNUM: That is my understanding.

12 MR. FLETCHER: Are there any mitigation measures
13 available to reduce selenium once its concentration have
14 increased?

15 DR. BARNUM: There are a number of technologies that
16 over the years have been tested. I participated in the
17 extensive San Joaquin Valley drainage program where the
18 State of California and federal government probably has
19 spent close to \$200,000,000 investigating ways to reduce the
20 level of selenium, and to my knowledge there is no
21 cost-effective and reasonable technology available to remove
22 selenium.

23 To mitigate for selenium there are probably a number of
24 ways. And depending on how far you want to go to mitigate,
25 it can be a very costly process.

1 MR. FLETCHER: Could you describe some of those ways
2 for us, please?

3 DR. BARNUM: One was brought up in this idea of the
4 multi-celled fish pond. And the idea -- I think what the
5 gentleman was referring to is the possibility of using a
6 biofilter process, basically some pretreatment marshes to
7 reduce or remove selenium using plant life, and then
8 allowing the lower selenium water to filter into the fish
9 ponds.

10 The problem with that approach is that it creates
11 another contaminate situation upstream from where you want
12 to actually produce your fish, and then you have to deal
13 with the contamination problem in the area that you've
14 created contamination. So that is -- but it is a
15 technology. It's proven to be very effective, biofiltering.
16 It's a matter of which problem do you want to deal with.

17 MR. FLETCHER: When you refer to the problem upstream,
18 basically you are referring to selenium uptake in the marsh;
19 is that correct?

20 DR. BARNUM: Right.

21 MR. FLETCHER: What is the problem with that?

22 DR. BARNUM: The problem with selenium uptake in the
23 marsh is that it makes it bioavailable to -- usually you
24 have an incursion on the aquatic plants, algae, that
25 concentrate the selenium at that site. You have aquatic

1 invertebrates that then concentrate the selenium further,
2 and you have birds that eat aquatic invertebrates.

3 MR. FLETCHER: You reduce the selenium downstream, but
4 you actually make it bioavailable? I'm thinking in terms of
5 the upstream end.

6 DR. BARNUM: Right.

7 MR. FLETCHER: If your objective is to keep selenium
8 from becoming bioavailable, given the difficulties you just
9 described, I guess it is probably better just not to
10 increase selenium concentrations at all; is that a fair
11 statement?

12 DR. BARNUM: I think it is a fair statement, yes.

13 MR. FLETCHER: Now, are you aware that IID Exhibit 55,
14 the EIR, also states that the habitat conservation plan for
15 the project includes habitat replacement to mitigate for the
16 biological impacts resulting from increased selenium?

17 DR. BARNUM: I understand there is some habitat
18 replacement for certain species.

19 MR. FLETCHER: That habitat replacement isn't intended
20 to decrease the selenium concentration; it just creates
21 other habitat?

22 DR. BARNUM: Correct.

23 MR. FLETCHER: Now, do birds distinguish between
24 habitat that has high concentrations of salinity and low
25 concentrations of selenium?

1 DR. BARNUM: Let me understand your question. You are
2 referring to salinity?

3 MR. FLETCHER: I'm sorry, I just did the same thing Mr.
4 Osias did. I meant selenium.

5 DR. BARNUM: They do not differentiate.

6 MR. FLETCHER: So, they would perhaps use this
7 replacement habitat. They may also use the old habitat; is
8 that correct?

9 DR. BARNUM: That is pretty much what we found in our
10 research in the Central Valley.

11 MR. FLETCHER: How do you keep the birds away from the
12 habitat in which the selenium concentrations have increased?

13 DR. BARNUM: We've found it very, very difficult, and
14 nobody has been able to achieve total bird avoidance at any
15 of the sites that I am aware of.

16 MR. FLETCHER: I have no further questions.

17 Thank you.

18 CHAIRMAN BAGGETT: Thank you.

19 Let's take a five-minute recess and come back, assuming
20 the County has cross.

21 MR. ROSSMANN: Sure.

22 (Break taken.)

23 CHAIRMAN BAGGETT: Back on the record.

24 Cross-examination of Salton Sea rebuttal witnesses by
25 the County of Imperial, Mr. Rossmann.

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CROSS-EXAMINATION OF SALTON SEA AUTHORITY

BY COUNTY OF IMPERIAL

BY MR. ROSSMANN

MR. ROSSMANN: Good morning, gentlemen. I am Tony Rossmann. I represent the County of Imperial as distinguished from the Imperial Irrigation District, and our interests are in contrast to some of our earlier colleagues with human critters.

I would just like to ask one general question of you, Dr. Friend.

Are there any human health impacts that we should be concerned with flowing from this incident of avian disease at the Salton Sea?

DR. FRIEND: There -- none of the diseases that currently exist at the Salton Sea are considered to be significant human pathogens. Several of them are capable of low grade infections under confined conditions that an individual is unlikely to evolve, to become involved with. The exception to that would be salmonellosis, which has occurred in some of the heron rookeries and in the egret rookeries. Salmonella type merian is a pathogen involved in the first event there in 1989 if my recollection is correct. These are off-sea type of events. They occur not along the shores of the sea or out in the water body itself. They have appeared in rookeries a mile, two miles

1 off sea. The origin of those is unlikely to have anything
2 to do with the Sea itself.

3 MR. ROSSMANN: How does that get transmitted to humans?

4 DR. FRIEND: It is a food poisoning that we get with
5 tainted chicken or potato salad or other kinds of things.
6 It is a common disease of bird feeders and many other type
7 places. It is a growing emerging problem not only in this
8 country, but in Europe and several other countries,
9 Scandinavia and other places in terms of bird feeders. I
10 would interject one other comment. I made my statement on
11 the basis of what is presently there. We have some concerns
12 and discussed these concerns in terms of evaluating the
13 Pacific Institute proposal and that is the -- you do have in
14 the Imperial and Riverside areas a reasonable amount of
15 arbovirus activity. Arboviruses are viral diseases
16 transmitted by mosquitoes. Weston encephalitis and St.
17 Louis encephalitis activity has been monitored for decades,
18 and the creation of freshwater impoundments as mosquito
19 habitat was discussed with some major concerns, that the
20 evaluation processes of late that has been driven by the
21 great expansion of West Nile virus that has entered these
22 coasts and is sweeping across the country.

23 So there is considerable concern in terms of creating
24 freshwater mosquito impoundments to possibly impact the
25 expansion or expression of arboviruses.

1 MR. ROSSMANN: Has that been the sole human health
2 concern that you identified so far?

3 DR. FRIEND: Yes, it is, and that is potential as
4 opposed to an existing.

5 MR. ROSSMANN: How about at the Sea it continues to
6 stay on its present course and declines, do you see any
7 human health impact resulting from, if you will, the no
8 action alternative?

9 DR. FRIEND: You would have to -- tell me what you are
10 thinking about in terms of human health. That is a pretty
11 vague term.

12 MR. ROSSMANN: In just arising from your field,
13 obviously, sir, of avian diseases.

14 DR. FRIEND: From an avian disease standpoint, the
15 diseases that are there currently are not issues in terms of
16 human health other than the salmonella which is not an
17 issue. Other human health issues, however, in terms of your
18 question are of concern.

19 MR. ROSSMANN: Arising from avian diseases?

20 DR. FRIEND: No, arising from degradation of
21 environment.

22 MR. ROSSMANN: Yes, sir.

23 So is it the case, then, that with both the avian
24 botulism and the avian cholera that that has not transmitted
25 to humans at all in the observed experience?

1 DR. FRIEND: That is correct. I would say avian
2 botulism comes in a variety of types. Type C is the
3 condition that we are dealing with in terms of the migratory
4 bird mortalities. That is not a human pathogen.

5 Type E has been identified infrequently. But Type E is
6 a serious pathogen. And that is typically associated with
7 saltwater-type environments except for Great Lakes. We do
8 not know enough, anybody in the world know enough about the
9 ecology of Type E to pass judgment on what may or may not
10 be. We know it is present.

11 MR. ROSSMANN: Thank you very much.

12 CHAIRMAN BAGGETT: Thank you.

13 Mr. Rodegerdts.

14 ---oOo---

15 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

16 BY CALIFORNIA FARM BUREAU FEDERATION

17 BY MR. RODEGERDTS

18 MR. RODEGERDTS: Thank you. Good morning, gentlemen.

19 My name is Henry Rodegerdts. I am the attorney for the
20 California Farm Bureau Federation.

21 Dr. Friend, I have several questions I want to ask of
22 you in connection with your draft papers that has been
23 identified Salton Sea Exhibit 31.

24 Where did you say that that was to be delivered?

25 DR. FRIEND: That is an ecosystem health meeting, and

1 the panel has to do with the marriage between agriculture
2 and sustaining biodiversity.

3 MR. RODEGERDTS: Is that the theme of the conference,
4 then, marriage --

5 DR. FRIEND: That is the theme of my session. The
6 theme of the contents is healthy ecosystems, healthy
7 people.

8 MR. RODEGERDTS: How are you going to deliver this?
9 Are you a keynote speaker for that session or are you on a
10 panel?

11 DR. FRIEND: I'm on a panel with several other
12 speakers.

13 MR. RODEGERDTS: You're familiar with the debate as to
14 how we're going to produce this water that is to be sent to
15 San Diego, whether it's going to be through fallowing or
16 there is an on-farm conservation program; is that correct?

17 DR. FRIEND: Yes.

18 MR. RODEGERDTS: In your paper on Page 11 you suggest
19 that the outcome of this debate about the transfer of this
20 water could possibly, and I quote, eventually minimize the
21 role of agriculture within the Imperial Valley by providing
22 enhanced opportunities for further withdrawal of water from
23 the Imperial Valley to serve other needs within Southern
24 California.

25 Could you elaborate on that thought?

1 DR. FRIEND: Yes. I have read a number of papers
2 written by people who work in this arena, who are looking at
3 the economics of what is produced where and the competition
4 for water. And the fact that the world of the future is
5 unlikely to be the world of our current conditions. And so
6 I'm simply picking up, as I indicated when I get to a
7 published paper, I will be citing those papers as the
8 reference point for a philosophy that shouldn't be ignored
9 because it may become the reality of a few decades from
10 now.

11 MR. RODEGERDTS: Do you have an opinion as to what
12 would be the result in the Imperial Valley if, in fact,
13 agriculture becomes less and may be significantly less
14 important than it is today?

15 DR. FRIEND: Layperson opinion. But I look at
16 agriculture as the lifeblood of the Salton Sea. And that
17 that lifeblood is the ability to sustain biodiversity. And
18 so from my perspective this is a win-win situation in which
19 agriculture and wildlife are very closely connected here and
20 that both can benefit from a mutual situation that provides
21 for the needs of both.

22 MR. RODEGERDTS: So would it be fair to suggest that
23 what we are saying is that they are mutually dependent on
24 each other?

25 DR. FRIEND: Absolutely.

1 MR. RODEGERDTS: By that I mean, elaborating on that,
2 that the Salton Sea is dependent upon agriculture for the
3 drainage water that it provides, and by the same token in
4 this new world order agriculture is dependent upon the
5 Salton Sea because that provides a justification for its
6 continued presence in Imperial Valley and its continued
7 justification for its use of water which, therefore,
8 produces drainage water which feeds the Salton Sea?

9 DR. FRIEND: That is correct. What I also argue there
10 is that the value of that water exceeds the value just for
11 the agricultural product, but the economic returns from the
12 wildlife component add value to that. And I support that on
13 the basis of 1.4 percent of the gross national product is
14 due to outdoor recreation. Most of that hunting, fishing
15 and bird watching.

16 CHAIRMAN BAGGETT: Do you have questions related to his
17 rebuttal testimony? I think we are getting a little bit
18 beyond the scope. I will object if no one else will.

19 MR. RODEGERDTS: In all due respect, Mr. Chairman, this
20 is -- I am examining from Exhibit 31, which to the extent we
21 didn't have a proposed testimony here, we only had outline,
22 and given in the outline the point four as I recall was the
23 discussion of the relationship between the Salton Sea and
24 agricultural drainage water, which is subject of this paper.

25 CHAIRMAN BAGGETT: Continue.

1 MR. RODEGERDTS: Thank you.

2 Turning to Page 12 of your paper, Dr. Friend, right at
3 the top you say agriculture and wildlife interests of the
4 Salton Sea can both benefit from becoming active
5 participants and investors in a joint venture.

6 What would be the components and characteristics of
7 that joint venture that you might have in mind here?

8 DR. FRIEND: The basic foundations are in the following
9 paragraph, I think, or somewhere down there. Typically it's
10 been a conflict situation. I am not talking about this
11 particular valley interest, talking general terms between
12 agriculture and conservation, and I am suggesting that is a
13 unique situation here, that is basically my comments at the
14 meeting, that the unique situation here provides an
15 opportunity to develop those relationships by putting some
16 folks together and seeing what we could work out.

17 MR. RODEGERDTS: In fact, maybe you could elaborate on
18 Page 13 in the middle paragraph. Again I quote: The
19 covenant needs to be developed should have the
20 sustainability of water for agriculture and the Salton Sea,
21 the perpetuation of avian biodiversity, enhanced
22 environmental quality of the water to the Salton Sea and
23 best on-farm management practices as the corner post for its
24 foundation.

25 I want to focus on the best on-farm management or best

1 management practices as the phrase is sometimes used in the
2 trade. Do you envision that to be the component of the in
3 part water conservation program that has been suggested as
4 how we are going to be able to send this water to San Diego
5 and the Coachella Valley?

6 DR. FRIEND: There is nothing inherent or thought about
7 in those comments relative to water transfer. The purpose
8 here, these are the components that we need to think about
9 so that the quality that was that best management, that
10 context of that, that the quality of water being delivered
11 to the Salton Sea was at a state that would help with those
12 other situations.

13 MR. RODEGERDTS: On Page 14 you make reference to the
14 in our new world order. You have made reference to the
15 concerns that the United Nations have about world population
16 and I assume about being able to feed that population.

17 Is that right?

18 DR. FRIEND: Yes.

19 MR. RODEGERDTS: For that we need a strong, healthy
20 world agricultural economy. You talk about -- and because
21 of that, wildlife is at the end of the pipeline and what we
22 should attempt to do, and I suppose what you're advancing
23 here is a concept that, to the extent possible, agriculture
24 should adopt its production practices in such a way that
25 they will be, to the extent possible, compatible with the

1 preservation of the wildlife species?

2 DR. FRIEND: That is correct.

3 MR. RODEGERDTS: But given reality at the top of the
4 food chain are people and the ability to feed them; is that
5 correct?

6 DR. FRIEND: That is the order of the world.

7 MR. RODEGERDTS: Do you think that or are you of the
8 opinion that, in fact, in the foreseeable future -- let me
9 put it this way: As between the proposed water conservation
10 program to facilitate this transfer, and that is what is on
11 the table right now, and the following alternative which is
12 talked about, but really is not on the table, can we do the
13 job in the foreseeable future for the Salton Sea with a
14 water conservation program, in your opinion?

15 DR. FRIEND: I'm going to have to answer since I'm not
16 totally clear on some of those issues, I will answer this
17 way: Those programs that significantly reduce the water
18 levels of the Salton Sea are not compatible with sustaining
19 the avian biodiversity of the Sea.

20 MR. RODEGERDTS: The Salton Sea, on Page 14 you say,
21 again quoting, presents a unique opportunity to develop a
22 joint venture between agriculture and wildlife interests
23 that applies on a large scale our ingenuity and technology
24 in a manner that uses agriculture drain water to provide an
25 additional array of major benefits, including the

1 conservation of biodiversity.

2 That is setting the stage for my question. Are you
3 familiar with Imperial Irrigation District Exhibit No. 69,
4 the Draft Salton Sea Restoration Project, Environmental
5 Impact Statement and Environmental Impact Report? I can
6 show you the first page. This is not the entire report;
7 this is simply the first 20 or 30 pages.

8 DR. FRIEND: I probably read pieces of this. I suppose
9 I have seen so many of these documents I don't want to -- I
10 don't know when this was produced.

11 MR. RODEGERDTS: There is a date on it.

12 DR. FRIEND: January. Probably. I'd say yes.

13 MR. RODEGERDTS: To help refresh your recollection, it
14 is my understanding that there are five goals of this
15 project and the first is to maintain the Salton Sea as a
16 repository of agricultural drainage.

17 Are you familiar with that as being one of the goals of
18 this?

19 DR. FRIEND: I am familiar with the five goals that you
20 stated.

21 MR. RODEGERDTS: That is consistent with what your
22 testimony just indicated, that your concern is that we at
23 least keep the Salton Sea water level at its present state;
24 is that correct?

25 DR. FRIEND: Yes.

1 MR. RODEGERDTS: If there was no water transfer at all
2 and agricultural production and practices continued as they
3 have, or as we find them in the Imperial Valley today, in
4 your opinion would the water levels of the Salton Sea be
5 maintained?

6 MR. KIRK: Mr. Chairman, this is beyond the scope of
7 this witness' expertise.

8 MR. RODEGERDTS: He has spoken about his concern that
9 we keep the water levels of the Salton Sea at what I
10 understood to be their current levels. Since he has an
11 opinion as to that, I would assume that that is within his
12 expertise and could answer this question.

13 MR. KIRK: Opinion and expertise are two different
14 things. Counsel has asked for his opinion, now he is
15 asking for opinion based on expertise, and he doesn't have
16 that expertise.

17 MR. OSIAS: As shocking as this may seem, I would join
18 in the objection. His opinion on what will happen to
19 elevation is beyond his expertise as an avian specialist.

20 MR. SLATER: Join.

21 MR. RODEGERDTS: I am in deep shock.

22 CHAIRMAN BAGGETT: Sustain the objection. You may
23 rephrase.

24 MR. RODEGERDTS: With that array of expertise opposing
25 my question, I don't think there is any possible way I can

1 surmount the burden.

2 CHAIRMAN BAGGETT: Thank you.

3 Mr. Rossmann is quiet.

4 MR. ROSSMANN: Why waste words. Just gilding the
5 lily.

6 MR. RODEGERDTS: Thank you very much.

7 I wish you well in your endeavor, I sincerely do.

8 Thank you.

9 CHAIRMAN BAGGETT: Thank you, Mr. Rodegerdts.

10 Mr. Du Bois.

11 ---oOo---

12 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

13 BY MR. DU BOIS

14 MR. DU BOIS: Dr. Friend and Dr. Barnum are the objects
15 of my questions at this time. My name is Bill Du Bois, and
16 I am representing myself here as a landowner in Imperial
17 County and, of course, therefore, very interested in the
18 future of agriculture there. Also, I went through the
19 entire story of Kesterson and, therefore, I am very
20 sensitive to what happens to drainage water and that is the
21 purpose of my questioning you.

22 Dr. Friend, you indicated in prior cross-examination
23 that the drainage water from Imperial was very beneficial,
24 reasonable use of water.

25 Is that correct?

1 DR. FRIEND: That is correct.

2 MR. DU BOIS: Dr. Barnum, you indicated that the
3 selenium might be -- the standards might be lowered to two
4 parts per billion, that that was under consideration by EPA?

5 DR. BARNUM: That is my understanding that it is under
6 consideration.

7 MR. DU BOIS: Now, with the transfer of I think even
8 130,000, which would be the minimum that even disrespecting
9 the QSA that Imperial could transfer to San Diego, appears
10 to affect the volume of flow of drainage water into Salton
11 Sea in the absence of fallowing. When the surface runoff
12 decreases and the tile line effluent becomes a major part of
13 the drainage flow into Salton Sea, with the increase in
14 salinity and selenium that that carries, Dr. Barnum, would
15 you believe still that that drainage water would be
16 beneficial to Salton Sea?

17 DR. BARNUM: Let me clarify your statement. I don't
18 think so much as an increase in selenium. The selenium is
19 there regardless of tailwater, but the amount of tile water
20 going in, if that reduces -- I mean, if that amount of
21 tailwater is reduced, then that would not dilute the
22 selenium is as much as it apparently is. So if you are
23 talking about a reduction of surface runoff, then that would
24 not dilute whatever selenium is there.

25 Now as to the question would it still be beneficial to

1 the Salton Sea, I believe so.

2 MR. DU BOIS: Thank you very much.

3 That answers my question.

4 CHAIRMAN BAGGETT: Thank you.

5 Mr. Gilbert.

6 ---oOo---

7 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

8 BY MR. GILBERT

9 MR. GILBERT: Thank you, Mr. Chairman.

10 I am Larry Gilbert, and I am a farmer in the Imperial
11 Valley. I have a question for Dr. Friend.

12 In your Exhibit No. 31 you make the statement that
13 wildlife interests must be willing to invest in a quality of
14 drain water that provides reasonable levels of health for
15 those wildlife.

16 Do you have in mind an amount that they should be
17 investing or willing to invest?

18 DR. FRIEND: No, I don't because it hasn't been
19 established. The point is the quality of water for human
20 consumption and the quality of water that is valuable in
21 sustaining wildlife populations may be quite different, but
22 those studies have not been done. And the point of my
23 urging is to examine this area more carefully since one size
24 does not fit all.

25 MR. GILBERT: You do not yet know how much would be

1 necessary or how much they should be willing to invest?

2 DR. FRIEND: No. That is the place where we need to go
3 and that is what I talk about in the partnership. These are
4 some opportunities that existed at the Sea to see what we
5 can do.

6 MR. GILBERT: Thank you.

7 That is all.

8 CHAIRMAN BAGGETT: Thank you.

9 Dana, do you have any?

10 Andy.

11 ----oOo----

12 CROSS-EXAMINATION OF SALTON SEA AUTHORITY

13 BY STAFF

14 MR. FECKO: Morning. I have one for Mr. Pelizza, if
15 you would.

16 I imagine you have some experience or have heard of
17 others' experience in dealing with wildlife outbreaks on
18 various refuges?

19 MR. PELIZZA: Yes, I have some experience as well as
20 knowledge of others.

21 MR. FECKO: What are some of the methods used to
22 control avian botulism, for example?

23 MR. PELIZZA: One of the primary methods of controlling
24 avian botulism is what we are currently doing is picking up
25 the carcasses, and basically what that is doing is removing

1 the protein source that the invertebrate would be utilizing
2 to perpetuate the disease cycle. So that is one of the
3 tools people use to manage the disease.

4 In dealing with a classic botulism cycle where you are
5 dealing with shallow water areas with waterfowl eating
6 maggots off of carcasses, another technique would be to have
7 the capability of draining a wetland unit to make it not
8 available or attractive for the birds to use the area. Or
9 if you can flood it more deeply, that would be another way
10 to break the cycle, is not to have the birds have access to
11 that invertebrate resource. Those are the primary methods
12 of controlling disease.

13 There has been other instances where we have just used
14 scare tactics, constantly running air boats to keep birds
15 out of the wetlands that you cannot drain.

16 MR. FECKO: Do you have the capability to circulate the
17 water like that at the Salton Sea?

18 MR. PELIZZA: No.

19 MR. FECKO: Dr. Barnum, you had said earlier today that
20 the concentrations in the drains was -- of selenium in the
21 drains was three to five ppb; is that right?

22 DR. BARNUM: That is roughly my understanding, in that
23 area.

24 MR. FECKO: I believe in the EIR for the transfer it's
25 represented that the concentration is closer to seven. In

1 fact, it breaks some of the water quality objectives for the
2 basin. I guess my question is: Have you seen a lot of
3 effects of selenium toxicosis in the Imperial Valley, the
4 New and Alamo River Deltas in the breeding populations and
5 such?

6 DR. BARNUM: I think it is fair to say that issue has
7 not been thoroughly looked at. There has been very limited
8 investigation in those areas, and what limited
9 investigations there have been reveals small sample sizes.
10 So it is difficult to say yes or no, there is or is not an
11 effect.

12 I know one sampling by Fish and Wildlife Service where
13 they found a single deformity in one of the drains. Does
14 that mean there is a selenium impact? I am not ready to
15 state for the record it is. It is such a small sample
16 size.

17 MR. FECKO: Certainly.

18 That number, three to five, do you know where that came
19 from? Is that some research that perhaps is unpublished, is
20 not known?

21 DR. BARNUM: Some probably from the '90s, early '90s,
22 some USGS reports. And some of those values spiked as high
23 as several hundred parts per billion in some drains. I
24 think the average value is closer to three to five.

25 MR. FECKO: If the situation in the Salton Sea is

1 without the proposed project, in other words, the situation
2 continues as it is today, do you expect selenium
3 concentrations in the Sea itself to increase from, I believe
4 you said, one part per billion at this point?

5 DR. BARNUM: Correct.

6 MR. FECKO: Do you expect that to increase?

7 DR. BARNUM: If the current situation continues, you
8 are saying the salinity is stabilized and all other
9 conditions remain the same?

10 MR. FECKO: Let's assume salinity is not stabilized.
11 Let's assume the Sea continues to get saltier.

12 DR. BARNUM: Given the scenario of continued inflows at
13 the same magnitude, I see no reason to suspect that the
14 selenium values in the water column in the Salton Sea would
15 change. There is some kind of special event that's going on
16 in the Salton Sea that we don't know exactly why it is
17 happening, but it seems to be maintaining rather stable
18 water column values with respect to selenium.

19 MR. FECKO: The last one is: Are you aware of any
20 studies which -- well, let me start that over.

21 You had said that birds affected by selenium
22 concentrations show some depressed Immune responses?

23 DR. BARNUM: Yes.

24 MR. FECKO: Is there any work -- has there been any
25 work done to determine if that has an affect on the

1 outbreaks of avian disease or anywhere, I should say?

2 If Dr. Friend wants to answer --

3 DR. FRIEND: The question of interactions is a
4 difficult one to assess in which there are no clear answers.
5 It is an area of personal research with other contaminants,
6 not selenium. Work done at our center by Dr. Pam Whitely
7 from Australia, a very good student, and some others have
8 shown under experimental conditions in a EPA facility that
9 selenium exposure in the food chain at very low levels have
10 resulted in increased susceptibility to duck virus
11 hepatitis.

12 MR. FECKO: Thank you.

13 CHAIRMAN BAGGETT: Tom.

14 MR. PELTIER: I just have a couple of questions for Dr.
15 Friend.

16 On Page 14 of Exhibit 31 there is a statement:
17 Practicality demands that we make better use of our water if
18 we are to preserve biodiversity and ultimately ourselves.
19 This must include reusing water to whatever extent it is
20 feasible.

21 Does that -- when you make that statement, are you
22 including, like, reusing water in the agricultural side of
23 things?

24 DR. FRIEND: Absolutely. I consider that part of the
25 global resource. And without it we don't have a prayer in

1 terms of sustaining current global biodiversity.

2 MR. PELTIER: So were you considering on-farm
3 conservation measures here that would involve reusing
4 water? Are you in favor of that?

5 DR. FRIEND: The context of my statement is reusing the
6 water to create wildlife habitat. That is the context in
7 which that statement is made.

8 There is no bearing on the issue of conservation in
9 terms of the agriculture practices. The waste stream that I
10 am suggesting is not waste, but, in fact, it is a resource,
11 it is a water resource, that we need to better understand
12 how to utilize if we are going to sustain global
13 biodiversity.

14 MR. PELTIER: Thank you.

15 CHAIRMAN BAGGETT: Have any redirect?

16 MR. KIRK: Three areas that I think will be brief.

17 ---oOo---

18 REDIRECT EXAMINATION OF SALTON SEA AUTHORITY

19 BY MR. KIRK

20 MR. KIRK: Dr. Friend, I know you are concerned about
21 things being taken out of context. Mr. Osias, who is a
22 colleague of mine on some issues, but some perhaps not, did
23 quote from the Strategic Science Plan, and he went through
24 the disease problem of the Salton Sea which you acknowledge,
25 of course, there is a disease problem at the Salton Sea,

1 the areas that are highlighted here.

2 Is it your recollection, and I will now read to you the
3 first part of that that Mr. Osias didn't read. The first
4 part of the sentence reads: Despite the attributes
5 described above for the Salton Sea and the several pages
6 before that, all under the heading "Reasons for
7 Restoration," described the biological resources, the
8 societal resources, waterfowl, hunting, sportfisheries,
9 recreational use, et cetera, is that the kind of thing you
10 are concerned about when folks talk about disease at the
11 Salton Sea, that they don't put it in context?

12 DR. FRIEND: That is correct.

13 MR. KIRK: The second question. You also heard
14 discussion of overpopulation, and I believe you corrected
15 that to reflect you're concerned about sometimes the
16 concentration of birds being a part of the disease equation;
17 is that correct?

18 DR. FRIEND: That's correct.

19 MR. KIRK: You pointed out that a concentration of
20 birds at some times and some places leads to significant
21 disease problems?

22 DR. FRIEND: That's correct.

23 MR. KIRK: Would you be concerned about concentration
24 of birds because of a loss of 250,000 acres of fishery
25 habitat and replacement of that by 5,000 acres?

1 DR. FRIEND: Yes, I would. It simply aggravates what
2 is an already aggravated condition.

3 MR. KIRK: Mr. Pelizza, you were also questioned about
4 the disease program itself and the distinction between
5 responding to disease and the prevention of disease. If I
6 remember correctly, you pointed out that your response, in
7 fact, is preventative in some ways as well; is that correct?

8 MR. PELIZZA: That's correct.

9 MR. KIRK: Dr. Friend, in fact, aren't you the father
10 of the wildlife disease program in many ways at the Salton
11 Sea, the current program?

12 DR. FRIEND: I guess so.

13 MR. KIRK: There is some -- you have some authorship of
14 that program?

15 DR. FRIEND: Yes, I do.

16 MR. KIRK: Isn't prevention a big part of the wildlife
17 disease program insofar as more research is being done on
18 the disease problems at the Salton Sea, more place-based
19 research is being done on disease problems at the Salton Sea
20 than any other place in the U.S.?

21 DR. FRIEND: That is correct. We have invested more
22 money in trying to deal with these issues, not simply for
23 the Sea, but because the exportability of what we learn in
24 terms of dealing with these issues in all these other
25 places.

1 MR. KIRK: Do you consider that a waste of money?
2 DR. FRIEND: I do not. It is a great investment.
3 MR. KIRK: Thank you.
4 CHAIRMAN BAGGETT: Mr. Osias.
5 MR. OSIAS: I have nothing further.
6 CHAIRMAN BAGGETT: Mr. Slater.
7 MS. HASTINGS: Nothing further.
8 CHAIRMAN BAGGETT: Mr. Rossmann.
9 MR. ROSSMANN: No, sir.
10 CHAIRMAN BAGGETT: Ms. Douglas, does PCL have anything?
11 Sierra Club is not here.
12 Audubon.
13 National Wildlife.
14 Defenders.
15 Farm Bureau.
16 MR. RODEGERDTS: Nothing.
17 CHAIRMAN BAGGETT: Mr. Du Bois.
18 Mr. Gilbert.
19 Staff.
20 Okay.
21 Would you like to --
22 MR. KIRK: I would like to introduce the exhibits, and
23 I do have some copies to provide you and the rest of the
24 folks. I will try to get that to you by tomorrow morning.
25 CHAIRMAN BAGGETT: Could you give us the numbers so I

1 can --

2 MR. KIRK: I was up to 35. I think we were going to
3 introduce 35 as the exhibit provided by Mr. Krantz, but let
4 me double-check. Actually, it is up to 36; 35, 36 being the
5 University of Redlands provided slide on bird banding in
6 North America.

7 MS. HASTINGS: What is Exhibit 35?

8 MR. KIRK: 35 is the slide depicting the wetlands in
9 California pre-development and post-development.

10 MR. OSIAS: Central California.

11 MR. KIRK: Thank you for the clarification.

12 CHAIRMAN BAGGETT: If there is no objection, they are
13 admitted into evidence.

14 Let's come back, start at one sharp; 1:00 sharp we will
15 go to San Diego. Take a lunch break now.

16 (Break taken.)

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AFTERNOON SESSION

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CHAIRMAN BAGGETT: Back on the record.

Before we begin with San Diego I want to put on the record that the hearing on the 28th of May was opened and closed with no testimony being put into the record yesterday, I guess as all parties are aware.

I just wanted to make sure that is for the Court Reporter here today.

With that, let's go to San Diego rebuttal.

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DIRECT EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

BY MR. SLATER

MR. SLATER: Mr. Chair, our witnesses have been previously sworn and were offered as part of the case in chief. I would like to begin with --

Ms. Stapleton, can you please state and spell your name for the record, please?

MS. STAPLETON: Maureen Stapleton, M-a-u-r-e-e-n S-t-a-p-l-e-t-o-n.

MR. SLATER: Before you I believe there is an exhibit marked San Diego 47 for identification purposes. Do you know what that is?

MS. STAPLETON: It is my testimony.

MR. SLATER: Do you wish to make any changes to the

1 written testimony?

2 MS. STAPLETON: Yes, I do. There is on Page 4, Line
3 20, there is a typographical error. The number on that line
4 should read 320,000 acre-feet instead of 32,000 acre-feet.

5 MR. SLATER: Any other changes?

6 MS. STAPLETON: No.

7 MR. SLATER: Is the testimony otherwise accurate, true
8 and correct?

9 MS. STAPLETON: Yes.

10 MR. SLATER: Are you aware that as a part of the
11 National Wildlife Federation's case in chief that they
12 indicated that the IID/San Diego transfer would be growth
13 inducing?

14 MS. STAPLETON: Yes.

15 MR. SLATER: I am going to ask a few questions to lay
16 some foundation for documents that I raised on cross and
17 have yet to be introduced in the record.

18 To begin with, do you know what SANDAG is?

19 MS. STAPLETON: Yes. It is a joint powers authority
20 with members of all of the local government agencies that
21 are responsible for land use planning. It also is
22 designated as the Regional Growth Management Control Board.

23 MR. SLATER: And I believe in front of you you have San
24 Diego Exhibit 20, which has already been introduced,
25 introduced into evidence. Is that correct?

1 MS. STAPLETON: Yes.

2 MR. SLATER: What is that agreement?

3 MS. STAPLETON: It is the memorandum of agreement
4 between the San Diego County Water Authority and SANDAG
5 establishing the implementation of the regional growth
6 management strategy section on water.

7 MR. SLATER: As the general manager for the San Diego
8 County Water Authority is it your opinion that San Diego
9 County Water Authority has been acting in accordance with
10 that agreement?

11 MS. STAPLETON: Yes. We have been planning, sizing and
12 phasing our facilities and water supply in accordance with
13 this agreement.

14 MR. SLATER: Does the San Diego County Water Authority
15 apportion water in the service area of one of its member
16 agencies?

17 MS. STAPLETON: No, we do no apportionment by member
18 agencies.

19 MR. SLATER: Does the San Diego County Water Authority
20 issue building permits or adopt zoning laws?

21 MS. STAPLETON: No.

22 MR. SLATER: I want to also ask you some questions
23 about the infrastructure that exists in San Diego County and
24 connects San Diego County Water Authority to the
25 Metropolitan Water District.

1 Assume for a second that the Colorado River Aqueduct
2 continues to remain full, are there existing pipeline and
3 treatment constraints that would limit the amount of
4 additional water that San Diego could receive from
5 Metropolitan?

6 MS. STAPLETON: Yes. We have a limited -- we are
7 getting close to our limit on our treated water, both
8 because of treatment capacity and we are -- the existing
9 pipelines cannot provide significant additional water into
10 our region.

11 MR. SLATER: Are you familiar with the emergency
12 storage project?

13 MS. STAPLETON: Yes.

14 MR. SLATER: What is it?

15 MS. STAPLETON: It is a series of distinct projects
16 which will allow for water to be stored in San Diego County
17 region in anticipation of an emergency or a sustained
18 drought.

19 MR. SLATER: Are there any limitations on how the
20 project is operated by the San Diego County Water Authority?

21 MS. STAPLETON: Yes. The water can be used for
22 emergency purposes only, and it does not provide any
23 additional significant capacity for conveyance nor supply.

24 MR. SLATER: I would like you to look at San Diego
25 Exhibit 51.

1 Can you tell us what that is?

2 MS. STAPLETON: It is our resolution of our Board
3 approving the proposed emergency water storage project in
4 adopting the findings of fact and the statements of
5 benefits and overriding conversations.

6 MR. SLATER: When was the EIR for that project
7 certified?

8 MS. STAPLETON: In 1996.

9 MR. SLATER: Now I want to ask you some questions
10 regarding the features or the elements that were important
11 to the San Diego County Water Authority in establishing a
12 fair price with Imperial Irrigation District for the
13 transport of conserved water.

14 Was there only one consideration that went into San
15 Diego's willingness to establish a price under that
16 agreement?

17 MS. STAPLETON: No. There were actually many
18 considerations. One of the most significant was the cost of
19 conservation on-farm in Imperial Valley.

20 MR. SLATER: Did San Diego attempt to do any due
21 diligence in investigating what the cost of on-farm
22 conservation would be?

23 MS. STAPLETON: Yes. We actually commissioned an
24 analysis and reports related to what the anticipated cost
25 may be for on-farm conservation measures in Imperial Valley,

1 and that was taken into consideration as part of our
2 consideration regarding the price.

3 MR. SLATER: Can you take a look at San Diego's
4 Exhibits 56 and 55, please?

5 MS. STAPLETON: Yes.

6 MR. SLATER: Are those two such reports?

7 MS. STAPLETON: Yes, they are.

8 MR. SLATER: Prepared at your direction?

9 MS. STAPLETON: Yes.

10 MR. SLATER: Was cost of alternative water to San Diego
11 also important?

12 MS. STAPLETON: Yes. Alternative supply cost was one
13 of the elements we considered in ultimately coming to a
14 price.

15 MR. SLATER: What was the primary source of alternative
16 water that San Diego considered?

17 MS. STAPLETON: Certainly, the price that we paid to
18 Metropolitan for water that they supplied was a serious
19 consideration in our decisions related to price.

20 MR. SLATER: What is that price currently?

21 MS. STAPLETON: \$349 delivered.

22 MR. SLATER: How about comparable sales or emerging
23 water markets, was that important?

24 MS. STAPLETON: Yes. We also looked at comparable
25 sales throughout California and did -- again, it was an

1 analysis done by staff and also looking at -- we had
2 additional reports and analysis commissioned to look at what
3 available water supplies may be out there or may have been
4 consummated during this period that we were under
5 negotiations.

6 MR. SLATER: Can I have you look at San Diego Exhibits
7 54 and 57, please?

8 MS. STAPLETON: Yes.

9 MR. SLATER: Are those two such reports?

10 MS. STAPLETON: Yes, they are.

11 MR. SLATER: Prepared at your direction?

12 MS. STAPLETON: They were both prepared at my
13 direction.

14 MR. SLATER: What about reliability, was reliability
15 also important to the Authority?

16 MS. STAPLETON: Reliability was one of the key features
17 we looked at in considering the overall price. Reliability
18 is critical to San Diego County for our overall -- for our
19 overall economic sustainability of our region.

20 MR. SLATER: Did the agreement between -- the transfer
21 agreement between San Diego and IID take into account
22 reliability as to the form of the pricing structure?

23 MS. STAPLETON: Yes. Not only the type of water that
24 IID would forebear, but also there are actual premiums
25 related to shortages that may occur on the Colorado River or

1 on the Bay-Delta, and we actually pay a premium for that
2 reliability.

3 MR. SLATER: What about quality, was quality
4 important?

5 MS. STAPLETON: Quality was one of the significant
6 issues because, obviously, the salinity of the water, the
7 quality of the water was important to us. The higher saline
8 water has more impact within the region, is not as viable
9 for reclaimed water status. So often can require additional
10 treatment. So that was a consideration to us.

11 MR. SLATER: What about cost of transportation?

12 MS. STAPLETON: Yes. When I talked earlier about the
13 comparison of alternative supplies and Metropolitan's cost
14 of 349, that is delivered to our front door. And we knew
15 that in consideration of the price when we paid IID, we had
16 another component that had to be paid, and that was the cost
17 of transportation to get the water from the river to San
18 Diego County.

19 MR. SLATER: Under the proposed transfer agreement how
20 does San Diego offer or propose to transfer the water made
21 available by IID to San Diego?

22 MS. STAPLETON: We had entered in 1998, entered into an
23 agreement with Metropolitan Water District of Southern
24 California, an exchange agreement, whereby the water will be
25 exchanged at the point of intake of the Colorado River

1 Aqueduct and a like amount of water will be delivered to our
2 front door in San Diego County, and that will be -- we will
3 pay Metropolitan a per acre-foot cost for the, in essence,
4 transportation of that water.

5 MR. SLATER: Are you aware of testimony in this
6 proceeding by either farmers or offered by Imperial County
7 raising questions about the lack of specificity in the
8 proposed conservation program that would be implemented by
9 IID?

10 MS. STAPLETON: Yes. I understand that concerns, in
11 fact, have been raised. When we put the program together
12 with IID, we really anticipated that we would be going
13 through the environmental, necessary environmental
14 documentation and review process, getting to certification
15 as well as through the State Water Board process, prior to
16 specifics being added to the program. We thought that way
17 it would provide additional certainties that would give
18 greater confidence and comfort to the Imperial Valley
19 farmers who were -- who are going to participate in the
20 program, knowing that these contingencies and these steps
21 have been completed. It really offers an opportunity, then,
22 for IID to focus on the specificity of the program to
23 conserve the water.

24 MR. SLATER: This ability to reserve discretion, was
25 that a cause of concern for San Diego in terms of it

1 receiving the water?

2 MS. STAPLETON: It really wasn't because San Diego --
3 because of how the contract is arranged. That as part of it
4 IID would quantify its water rights on the Colorado River at
5 the 3.1 and then would forebear real water to San Diego. So
6 we had a comfort that in the end we get real water, and that
7 it was literally the how of how do you conserve the water to
8 achieve the transfer, and it wasn't the what, which is the
9 deal.

10 MR. SLATER: Are you aware of testimony in this
11 proceeding alleging that the reduced inflows, potential
12 reduced inflows, to the Salton Sea that may be attributable
13 to this transfer could have an adverse impact on the fish
14 and wildlife?

15 MS. STAPLETON: Yes, I am aware of that.

16 MR. SLATER: Are you aware of any concerns that the
17 California Department of Fish and Game has expressed
18 regarding permitting approach one to the HCP for the
19 transfer from Imperial to San Diego?

20 MS. STAPLETON: Yes. The four water agencies have been
21 working in concert with the Department of Fish and Game in
22 trying to determine an appropriate mitigation plan. At the
23 last meeting with Fish and Game they indicated that, in
24 fact, that the hatchery fish pond mitigation plan that we
25 had been working on was not -- would not be feasible and in

1 their eyes would not be permissible and that a letter would
2 follow, which basically indicated the same.

3 MR. SLATER: Ms. Stapleton, I would like to sharpen a
4 little on the date of that meeting. When was the meeting?

5 MS. STAPLETON: The meeting was on May 21st, and
6 representatives from the four agencies met with Fish and
7 Game at that meeting.

8 MR. SLATER: Was that a continuation of a series of
9 meetings?

10 MS. STAPLETON: Yes. It was a continuation of months
11 of meetings with Fish and Game, and that IID and all of the
12 parties had been working very hard to try to come up with a
13 mitigation plan for the on-farm conservation program that
14 would be permissible.

15 MR. SLATER: And have you received any subsequent
16 correspondence from the Department of Fish and Game with
17 regard to permitting approach one?

18 MS. STAPLETON: Yes. We have received a letter, as
19 anticipated, from Fish and Game, Mike Valentine, who is
20 their counsel, basically reiterating what was told to us on
21 May 21st in our meeting.

22 MR. SLATER: Do you have a copy of that letter in front
23 of you?

24 MS. STAPLETON: No.

25 MR. SLATER: Approach the witness?

1 CHAIRMAN BAGGETT: Yes.

2 Proposed exhibit?

3 MR. SLATER: If I can mark for identification purposes
4 only at this point proposed San Diego Exhibit, I believe it
5 is, 60.

6 MS. HASTINGS: Yes.

7 MR. SLATER: Ms. Stapleton, what does this letter
8 appear to be?

9 MS. STAPLETON: This letter is a letter to John Carty
10 of IID and to me as general manager of the Water Authority
11 from Michael Valentine, general counsel, Department of Fish
12 and Game, articulating what we were told on May 21st,
13 regarding the Department's views of the permissibility of
14 the mitigation plan as proposed.

15 MR. SLATER: The letter appears to carry Department of
16 Fish and Game letterhead?

17 MS. STAPLETON: Yes.

18 MR. SLATER: And signed by general counsel for the
19 Department?

20 MS. STAPLETON: Yes, signed by Michael R. Valentine,
21 General Counsel, Department of Fish and Game.

22 MR. SLATER: Is this letter consistent with your
23 understanding of the Department's position with regard to
24 permitting approach one?

25 MS. STAPLETON: Yes, this is consistent with what we

1 have been told in our prior contact with them.

2 MR. SLATER: It s apparent that there may be additional
3 further follow-up correspondence?

4 MS. STAPLETON: Yes. In this letter there is an
5 indication that we can expect a letter in the near future, a
6 joint letter from Fish and Game, Department of Fish and
7 Game, and Wildlife Services.

8 MR. SLATER: Given the fact that you have received this
9 letter and in light of the allegations about injury to fish
10 and wildlife at the Sea, in your view does the testimony or
11 the letter present a barrier to the successful completion of
12 the transfer?

13 MS. STAPLETON: No, I don't believe so. What it does
14 is it provides a challenge as to the how, the methodology in
15 which the water is conserved. But it does not preclude the
16 water transfer. There are alternatives which are only noted
17 in the Environmental Impact Report, the Draft Environmental
18 Impact Report that is out presently, but also there have
19 been discussions which have looked at other alternatives.

20 MR. SLATER: Those alternatives might include?

21 MS. STAPLETON: Might include different methods in
22 which to conserve including a fallowing or land management
23 program.

24 MR. SLATER: Ms. Stapleton, are you aware that there
25 are also allegations that if IID in its discretion were to

1 pursue a fallowing program that there could be significant
2 socioeconomic impacts to Imperial Valley?

3 MS. STAPLETON: Yes, I am aware of that. And as a
4 matter of fact it is why San Diego paid what it did for
5 on-farm conservation to help avoid or fully mitigate such
6 socioeconomic impacts that you mentioned.

7 MR. SLATER: Are you aware of the socioeconomic impacts
8 related to Alternative 4 in the DEIR/EIS for the transfer
9 agreement?

10 MS. STAPLETON: Yes, I am.

11 MR. SLATER: Are you aware of testimony offered by Dr.
12 Smith regarding the potential socioeconomic impacts that
13 might result if fallowing were pursued in connection with
14 the conservation program?

15 MS. STAPLETON: Yes, I am aware of it.

16 MR. SLATER: Did the San Diego County Water Authority
17 proceed to take any action in response to the estimates of
18 significant socioeconomic impact?

19 MS. STAPLETON: Yes. Actually we took two separate
20 actions. One is that we provided specific comments
21 regarding the socioeconomic impact analysis in DEIR/EIS, and
22 those were provided to the Bureau of Reclamation and to
23 IID.

24 And then secondly, I also, under my direction, had
25 hired Dr. Sunding of Cal Berkeley to assist us in looking at

1 ideas or concepts, mechanisms, in which we could -- in which
2 a program could be developed which reduces the socioeconomic
3 impact of a land management program.

4 MR. SLATER: Let me call your attention to a document
5 which has been identified as San Diego Exhibit 52, and take
6 a look at that.

7 MS. STAPLETON: Yes.

8 MR. SLATER: What is that?

9 MS. STAPLETON: That is my letter to IID and to the
10 Bureau of Reclamation responding or providing comments on
11 the Draft EIR/EIS.

12 MR. SLATER: That was prepared under your direction?

13 MS. STAPLETON: Yes.

14 MR. SLATER: Can you briefly summarize the comments
15 contained in that letter with regard to socioeconomic
16 impacts?

17 MS. STAPLETON: Yes. We were commenting specifically
18 on the Draft EIR/EIS analysis of Alternative No. 4 and the
19 impacts that it would derive. We believed that the
20 assumptions and determinations were not consistent with
21 other information that we had received, and as a result we
22 submitted to them copies of the Kleinman Report prepared by
23 the Bureau of Reclamation, the Palo Verde information which
24 we received from Metropolitan Water District and a copy of
25 the CIC report which was prepared for their community

1 advisory council.

2 MR. SLATER: Those are attachments to San Diego Exhibit
3 52, correct?

4 MS. STAPLETON: Yes.

5 MR. SLATER: With regard to Dr. Sunding --

6 MR. OSIAS: Objection. Now that we know who he is.
7 Dr. Sunding apparently prepared a report for this hearing.
8 He has not been offered as a witness. This witness has not
9 been qualified as an expert on the subject, and so merely
10 attaching an unpublished piece of work that is not an
11 article, that has no Curriculum Vitae and to have a witness
12 merely report on it, when we don't have an opportunity to
13 cross-examine, find out his biases, see if he spent an hour
14 preparing this report or 30 minutes or maybe two hours or
15 anything else like that, we move to not have it be admitted.
16 We move to strike -- I think there is only two sentences in
17 the testimony referring to it, and ask that counsel not be
18 permitted to ask questions about its content.

19 MR. SLATER: May I respond?

20 It is admissible under two grounds. First of all, Ms.
21 Stapleton is the general manager of the water district. She
22 has -- if the chair will allow me to voir dire on subjects
23 of retaining staff or directing for staff reports or reports
24 from consultants with regard to how to administer a program,
25 she is an expert on how to administer a wide variety of

1 management programs within the San Diego County Water
2 Authority. She's got many years of experience in that
3 regard, one.

4 And, second, it is a report that was prepared at her
5 direction as a business record. It is something that is
6 clearly something she consistently has done and will do in
7 the future.

8 MR. ROSSMANN: Your Honor, I am going to emphatically
9 support Imperial Irrigation District's objection here and
10 move to, not merely that it be qualified, but that it be
11 stricken for two additional reasons.

12 The first is that when I learned of Dr. Sunding's
13 presence and expertise, being an almost neighbor, I sought
14 his advice in this proceeding, and he advised me that he had
15 been engaged by San Diego. In fact, he was present at this
16 hearing room earlier.

17 I was looking forward very much to having Dr. Sunding
18 share his experience with us. But it is extremely
19 prejudicial to not have him here to answer our questions and
20 to be disabled from enabling all of us to benefit.

21 Furthermore, as an offer of proof, if he were here I
22 would show bias toward following that is unfounded. I would
23 offer an article that he wrote praising a program in Nevada
24 and the fact that this program has been criticized by United
25 States Western Water Policy Review Commission as a case

1 study in alienation, and, furthermore, that that program has
2 led to litigation still pending for six years by Churchill
3 County against that program.

4 So it is extremely prejudicial that Dr. Sunding is not
5 before us as a witness, and he is being presented as an
6 expert. This testimony should be stricken, sir.

7 MR. OSIAS: I'd just like to respond to the two grounds
8 for --

9 MR. SLATER: I have a third, too.

10 MR. OSIAS: Why don't you mention that one and then
11 I'll respond to that.

12 MR. SLATER: She is an expert. She has formed a
13 conclusion and a recommendation, and she is entitled to talk
14 to other experts and examine their analysis in formulating
15 her own opinion. She has attached or we have attached this
16 report. Her testimony reads that she relies on a number of
17 sources of information, including her review of the report,
18 and that report is consistent with other testimony and
19 information that's in the record.

20 And I have a fourth, actually, which is this process
21 has revealed a number of instances in which we've had a
22 single witness testify about a wide variety of reports. And
23 as an example with regard to the Environmental Impact
24 Report, we had a single witness summarizing work that had
25 been undertaken by other experts which was outside of their

1 expertise.

2 As a final offer, we have no problem in offering Mr.
3 Sunding as a part of the reopened or limited purpose hearing
4 in July, if counsel think that -- are desperate to have it
5 and think that it is completely material to Ms. Stapleton's
6 testimony, we are willing to make him available at that
7 time. He is presently in Washington, D.C., and was
8 unavailable to be here.

9 MR. OSIAS: Let me take them in reverse order. A
10 limited hearing in July on the changes to the EIR/EIS is not
11 a hearing where this entire subject of fallowing and the
12 impacts of fallowing should be again scrutinized. So I
13 don't think that is an admission ground. That was merely, I
14 suppose, a suggestion that we could adjourn today until
15 July.

16 Going to the four grounds or admission. Because
17 someone is expert on subject A and as a expert on that
18 subject is allowed to rely on a variety of materials doesn't
19 let them use and express an opinion on something that they
20 themselves are not expert on. So there is nothing in the
21 curriculum vitae attached in Ms. Stapleton's prior testimony
22 which establishes any expertise she has in the field of ag
23 economics, economics of farming or that she has ever done
24 any studies herself on any of those subjects, especially
25 with respect to the Imperial Valley.

1 The fact that she might be an expert on running
2 programs in San Diego is sort of irrelevant to the question
3 of how would you run a program among multiple farmers in
4 Imperial. In addition, the fact that she commissioned the
5 study cannot either create a business record by virtue of
6 that nor establish that because she had enough knowledge to
7 commission a study that she herself is an expert on the
8 area. A business record, which is normally only relevant in
9 an evidentiary hearing as an exception to the hearsay rule,
10 which doesn't generally apply here anyway, is a record made
11 in the ordinary course and scope of the activity for which
12 the business record is being made, and because of those
13 parameters its veracity is assumed even though it is
14 hearsay.

15 Now this record is clearly none of those. This was a
16 study commissioned apparently in response to or in
17 preparation for rebuttal in response to developments in the
18 environmental review process in an effort to either sway
19 this Board towards commenting, suggesting or maybe ordering
20 something regarding fallowing. But be that as it may, none
21 of that makes it a business record.

22 CHAIRMAN BAGGETT: Okay.

23 Mr. Rossmann. Then I will make --

24 MR. ROSSMANN: Well, I will certainly sustain my
25 Brother Osias in everything he said. I would add just two

1 analogies.

2 CHAIRMAN BAGGETT: Gee, getting too much.

3 MR. ROSSMANN: The EIR preparer analogy, the person who
4 supervised that was honest when we asked her about air
5 quality and that she didn't do it. So that was an
6 inadequate presentation that didn't work to the benefit of
7 those presenting it.

8 If San Diego wanted to benefit from Dr. Sunding's
9 support of their case, they should have brought him here.
10 The parallel is we could have called Mr. Heuberger as a
11 planning director who, the course of his business, knows
12 pretty much all about economic impacts in the county as a
13 generalist, but we didn't. We had to call Mr. Spickard
14 because he was the one who actually did the work. What is
15 good for the goose is good for the gander here.

16 CHAIRMAN BAGGETT: One final comment.

17 MR. SLATER: The San Diego County Water Authority has
18 more than just M&I customers. They have substantial ag
19 industry within the county. They do administer ag programs.
20 She is testifying as to the viability of the program to
21 implement specific measures which are contained not only in
22 the Sunding Report, but in other reports. Her opinion is
23 offered not as to the viability of the specific economic
24 measures, but what a program would include.

25 CHAIRMAN BAGGETT: Clearly this could not be admitted

1 as evidence unless it is admitted under the weight of the
2 evidence unless we consider it -- we could consider it under
3 our hearsay rule, which is to the weight we give it. I
4 don't see how I would sustain the objections; it clearly
5 can't be introduced. Expert testimony is -- the witness
6 clearly isn't an ag expert. She manages an urban water
7 agency, whose goal, from previous testimony, was actually an
8 urban water management plan was retire agricultural lands to
9 conserve, to create water for future growth, which is
10 clearly in the record.

11 I would sustain Mr. Osias' logic on that.

12 In terms of hearsay evidence, our rules, as you know,
13 are incredibly lax. If either counsel has a response to
14 hearsay, for the truth of fact, I would agree. But it is
15 hearsay, weight --

16 MR. OSIAS: Let me just respond to what you said,
17 because I interrupted Mr. Slater, tried to interrupt him at
18 the right time, but interrupted him I did. That is he was
19 about to ask questions of this witness either on the subject
20 of fallowing or about this report. This witness is not an
21 expert and, therefore, should not be allowed to give her
22 opinion on this report or on this subject. That's not a
23 hearsay problem, that is a lack of expertise.

24 The report itself exists. If it is offered in as a
25 hearsay document and not as expert testimony, I suppose,

1 there is two differences between it and other hearsay you've
2 admitted. One is it was prepared specifically for this
3 hearing versus, say, a newspaper article or a magazine
4 article, we've seen plenty of those, or a web thing which
5 were prepared not for the purpose of swaying this Board. So
6 they have their own indicia of veracity.

7 And, second, it was not a published, scientific paper
8 that went through some other process. Although you may
9 admit her hearsay, as you've said, you are not compelled to
10 admit hearsay, and you can choose in this circumstance,
11 given the importance of the subject and the lack of any
12 indicia of time spent, qualifications of preparer, et
13 cetera, to say we know its existence and we don't admit it
14 because there has not been a foundation even for use of the
15 hearsay, and we don't have a witness here anyways on behalf
16 of this party who can talk about it.

17 MR. ROSSMANN: Your Honor, I would really restate what
18 Mr. Osias just said, that you are not required to admit the
19 hearsay, and I think that the prejudice of admitting this
20 document far outweighs whatever probative value could be
21 assigned under the hearsay rule under the circumstances that
22 Mr. Osias has described. And I would just emphasize
23 Professor Sunding was in this hearing room earlier in these
24 proceedings, and why he isn't here today, when every other
25 witness has been called and has been present, is something

1 that prejudices the other participants in this hearing.

2 We don't get the advantage of asking Dr. Sunding the
3 questions we would like. I think the probative value is
4 limited as it maybe is far outweighed by prejudice of
5 considering this report.

6 CHAIRMAN BAGGETT: One final.

7 MR. SLATER: As indicated in the written testimony, as
8 Ms. Stapleton can corroborate, the report was prepared not
9 solely in connection with these proceedings. It was
10 prepared to provide some assistance with regard to preparing
11 comments on the Draft EIR/EIS. And, again, it is not
12 inconsistent with the position taken in the comments.

13 MR. OSIAS: The comments did attach the report that Mr.
14 Slater mentioned before. Not attached this one, was not
15 submitted with the comments. We would have seen it April
16 25th when these were submitted. So it obviously was
17 prepared after that date.

18 CHAIRMAN BAGGETT: I will sustain the objections. I
19 think the prejudicial value of the report specifically
20 prepared -- and I guess that is where I weight on it. Under
21 the hearsay rule, under our hearsay rule, I think its
22 admission if it were an article, an article in a normal
23 publication, something out in the field, I could accept
24 that. But I think I agree with both opposing counsel that
25 prejudicial value of this report of this nature specifically

1 prepared by an expert who is not available to be crossed is
2 pushing even our hearsay standards to the limit.

3 I will sustain the objections.

4 Continue.

5 MR. SLATER: Ms. Stapleton, you referenced or
6 summarized specific comments in the letter that San Diego
7 prepared and transmitted regarding the Draft Environmental
8 Impact Report/Environmental Impact Statement, correct?

9 MS. STAPLETON: Yes.

10 MR. SLATER: In your view those comments are supported
11 by the reports which are attachments to the San Diego
12 comment letter, correct?

13 MS. STAPLETON: Yes.

14 MR. OSIAS: Mr. Chairman, he got the answer out
15 quickly, so I move to strike that. The fact that these
16 comments were submitted we didn't object to that evidence
17 being presented. And I think Mr. Salter was skillful to ask
18 for her to summarize them or if they were summarized
19 somewhere in her testimony, and I didn't object to that
20 because any of us are qualified to summarize something if we
21 just shorten the words a little bit. Now he is asking her
22 opinion whether those reports are correct.

23 MR. SLATER: Not true.

24 MR. OSIAS: Or whether she is adopting that opinion --

25 MR. SLATER: Not true.

1 MR. OSIAS: That is what I heard. I want to make sure
2 that my objection not only to that report but to Ms.
3 Stapleton as an expert is heard, she shouldn't be allowed to
4 opine whether Dr. Kleinman knows what he is talking about
5 because she doesn't have the expertise to know whether he
6 knows what he is talking about. That was a report that was
7 attached to the EIR comments. You have it because that is
8 how it showed up.

9 Questioning her about its comments, conclusions or
10 summaries from anything other than a reporting basis -- in
11 other words if she has to apply brain power to what does it
12 mean, it should not be admitted.

13 CHAIRMAN BAGGETT: Mr. Slater.

14 MR. SLATER: The question was did she read them and,
15 secondly, were they consistent, were the reports -- in her
16 view were those comments consistent with those that she
17 articulated in the comment letter.

18 MR. OSIAS: That question is fine.

19 CHAIRMAN BAGGETT: I will overrule the objection.

20 MR. SLATER: That was the question.

21 CHAIRMAN BAGGETT: The witness can answer the
22 question.

23 MS. STAPLETON: Yes.

24 MR. SLATER: With regards to the San Diego County Water
25 Authority's perspective, what measures would San Diego

1 support IID considering to potentially reduce socioeconomic
2 impacts associated with a fallowing program?

3 MS. STAPLETON: I think there is a variety of
4 considerations; and that would be targeted crops, targeted
5 soil, temporary fallowing, ensuring that there was a
6 mechanism to keep the money in the Valley and that the
7 development of a program to mitigate any remaining
8 socioeconomic impacts.

9 MR. SLATER: Anything with regard to targeting specific
10 soils?

11 MS. STAPLETON: Yes. Is both in targeting soils as
12 well as rotational program so that, as I said, it's a
13 temporary fallowing program I would recommend and makes more
14 sense than a permanent program.

15 MR. SLATER: Would -- Strike that.

16 Would San Diego be supportive of IID proceeding with a
17 conservation program that seeks to avoid greater harm to
18 the Sea than would occur but for the transfer?

19 MS. STAPLETON: Yes. We would work with IID to develop
20 a program that meets the needs of the Valley and can reduce
21 the impacts to the Salton Sea.

22 MR. SLATER: Thank you, Ms. Stapleton.

23 I have no further questions of this witness.

24 Mr. Underwood, would you please state and spell your
25 name for the record?

1 MR. UNDERWOOD: Dennis Underwood, D-e-n-n-i-s
2 U-n-d-e-r-w-o-o-d.

3 MR. SLATER: I believe you have in front of you a
4 document identified as San Diego Exhibit 48.

5 MR. UNDERWOOD: Yes.

6 MR. SLATER: Do you recognize that?

7 MR. UNDERWOOD: Yes, it is my testimony, supplemental
8 testimony.

9 MR. SLATER: Do you wish to make any changes to that
10 written testimony?

11 MR. UNDERWOOD: No, I do not.

12 MR. SLATER: Is it otherwise true, accurate and
13 correct?

14 MR. UNDERWOOD: Yes.

15 MR. SLATER: What is your position with the
16 Metropolitan Water District?

17 MR. UNDERWOOD: I am the vice president with
18 Metropolitan Water District.

19 MR. SLATER: Are you aware of any programs that have
20 been pursued or administered by Metropolitan which have
21 studied land fallowing?

22 MR. UNDERWOOD: Yes. There was a program in 1992
23 through 1994, a test fallowing program. And if I may, I
24 think it may be helpful to understand the application if I
25 explain what context.

1 MR. SLATER: Sure.

2 MR. UNDERWOOD: Take you back to 1988. People
3 recognized that they had to, California was going to have to
4 reduce its use of Colorado River water. That led to the
5 development of the Imperial/Metropolitan Water District
6 conservation program. Which is presently conserving about
7 110,000 acre-feet. We also knew that there would have to be
8 other types of programs implemented.

9 This is going to span two different careers of mine.
10 One is at the time I was, at this period of time, I was the
11 Executive Director of the Colorado River Board, no aliases,
12 but during this program I was the commissioner of Bureau of
13 Reclamation. In the beginning in terms of the development
14 of other programs with the Colorado River Board I knew the
15 essence of trying to look at broad ways of bringing about
16 reduction in California's use. That really was the context
17 of the development of the test following program. It was
18 not just for Palo Verde, but could that have application,
19 broader application.

20 In fact, once we did the program, Imperial had
21 requested a similar test with them. We could do that at
22 that time, at least when I was commissioner it didn't think
23 it was appropriate because the other states would object.
24 Water was being stored. Water that was being conserved was
25 being stored in Lake Mead. The other states were concerned

1 that California was earmarking water. So, really to find
2 out the pros and cons and what the impacts of those programs
3 was why we pursued it.

4 MR. SLATER: Can you describe the nature of the
5 program?

6 MR. UNDERWOOD: The program, again, was carried out
7 from August 1992 through August 1994, a two-year period.
8 Had roughly 20,215 acres which is roughly about 22 percent
9 of the irrigated acres in the Palo Verde Valley. There was
10 an agreement in terms of a price to be paid for the water
11 during this period of time, and it was earmarked as \$620 for
12 a fallowed acre. If you -- and at that time we believed
13 that the consumptive use was 4.6. If you divide that, it
14 equates out to \$130 an acre-foot conserved. If you put in
15 the program administration costs, then that equates to \$143
16 per acre-foot.

17 MR. SLATER: How many acres were involved?

18 MR. UNDERWOOD: 20,215, like I said, about roughly 22
19 percent of the irrigated acres.

20 MR. SLATER: Was a study produced?

21 MR. UNDERWOOD: Yes, there was. There was a substantial
22 amount of oversight. First of all, Imperial, Coachella and
23 Metropolitan, the Bureau of Reclamation provided oversight
24 relative to the verification of the safe water. And there
25 was a number of surveys, four surveys, during, before and

1 during and after conduct. They were conducted by
2 consultants to look at the impact of the program. Plus
3 there was field monitoring going on at the same time.

4 MR. SLATER: I believe in front of you you have a
5 document which has been identified as PCL Exhibit 31.

6 MR. UNDERWOOD: Yes.

7 MR. SLATER: What is that?

8 MR. UNDERWOOD: It is titled Regional Economic Impacts
9 on Palo Verde Test Land Fallowing Program prepared by MQ for
10 the Metropolitan Water District. It summarizes the impacts
11 of the program.

12 MR. SLATER: Do you know what the findings of the study
13 were?

14 MR. UNDERWOOD: There was a number of significant
15 findings that should be of interest. One is that we found
16 that the program was not found to have an overall affect on
17 the regional economic performance to any significant
18 degree. It was found that it did not cause any nonfarm
19 related businesses in the region to reduce employment or
20 loss revenue.

21 On the other hand, we did find that it had negative
22 economic impacts on -- the program had economic impacts, and
23 it was concentrated principally in the agricultural services
24 and supplies for the region. The program was also found not
25 to be the only cause for reduced regional demands for farm

1 labor or services and manufacturing inputs. During this
2 time there was, from 1988 through this period of time, there
3 was substantial problems with the farm economy. Some of
4 these were crop prices and the other has to do with whitefly
5 problems which affected various crops.

6 It also was found that 93 percent of the funds, the
7 payments, in excess of the fallowing and maintenance costs
8 were then spent locally on farm-related improvements. It
9 was also found that there was no measurable change in
10 taxable sales, property taxes or construction activity in
11 the region.

12 It was well received, the program was well received by
13 the farmers and the district, the Palo Verde Irrigation
14 District and Metropolitan.

15 MR. SLATER: Has Metropolitan taken any action in
16 reliance upon the study?

17 MR. UNDERWOOD: Like I indicated to you, this was to
18 have a broader application. And if you look at the
19 Quantification Settlement Agreement, there is the transfer
20 of about 400,000 acre-feet that goes to Metropolitan's
21 aqueduct. If you consider the 550- of the fourth priority,
22 the 550,000 of the fourth priority, you get up to about
23 roughly 950,000 acre-feet. That is still about 300,000
24 acre-feet short of having a full aqueduct. That is why we
25 looked at doing a long-term program with Palo Verde. The

1 farmers were interested in doing a longer term program. We
2 were interested in doing a longer term program. The
3 motivation was that we needed to do something beyond the
4 transfers in the QSA, the Quantification Settlement
5 Agreement.

6 MR. SLATER: The specifics of how the project would
7 work?

8 MR. UNDERWOOD: This is a variable water supply
9 program. It is one almost like looking at hydroelectric
10 power plant where you can fit your load by the water
11 supply. It is a minimum water supply of 25,000 acre-feet.
12 This involves about 6,000 acres, which is roughly about 7
13 percent. It goes up to 111,000 acre-feet. It's with a
14 one-year notice. The program provides for 111,000 for ten
15 years and the other 25 at a hundred thousand acre-feet.

16 MR. SLATER: Has a Draft Environmental Impact Report
17 been prepared for this proposed project?

18 MR. UNDERWOOD: Yes, it has, and it was released at the
19 end of May. I think the commenters, the public comment
20 period, I think that closes June 14th.

21 MR. SLATER: Can I have you look at San Diego Exhibit
22 50, please?

23 MR. UNDERWOOD: Yes.

24 MR. SLATER: Does that look familiar?

25 MR. UNDERWOOD: Yes, it is the draft of the

1 Environmental Impact Report.

2 MR. SLATER: Would there be land management efforts to
3 address pollution in connection with this project?

4 MR. UNDERWOOD: Let me explain up front. There is no
5 change in water rights under this program. There is no
6 change in land ownership and there is no conversion from ag
7 lands involved in this program. There are requirements that
8 the lands -- that this is a rotation. If you listen to the
9 title of the program, it is a land management crop rotation
10 water supply program, where lands will be rotated at least
11 once every five years. A lot of this is to address air
12 quality and weed control and the productivity of the lands.
13 If you keep them out of production too long, then they will
14 not be productive.

15 There is measures similar to the test program, the
16 requirements for land management by the landowner
17 participating in the program for the fallowed lands to
18 address air quality problems.

19 MR. SLATER: Is it your view that as structured the
20 proposed PVID program will not result in significant
21 environmental and socioeconomic impacts?

22 MR. UNDERWOOD: Yes.

23 MR. SLATER: In your view are these measures, the
24 measures that you described, feasible even in light of the
25 fact that there is going to be a long-term water supply

1 commitment?

2 MR. UNDERWOOD: Yes. Let me explain. There are two
3 agreements under this program. One agreement is the 35-year
4 program with the landowners. So there is individual
5 agreements between Metropolitan and the landowners
6 themselves that will voluntarily enter into those
7 agreements. We do the long-term water supply. They were
8 also looking at a reliable revenue stream for themselves to
9 help provide stability for the ag or the local economy.
10 Then there is an agreement with the district itself in terms
11 of a program administration.

12 MR. SLATER: Thank you, Mr. Underwood. Appreciate it.
13 Mr. Levy, can you state and spell your name?

14 MR. LEVY: Tom Levy, L-e-v-y.

15 MR. SLATER: I think in front of you, if you pass that
16 over, there is a document that has been identified as San
17 Diego Exhibit 49.

18 Can you look at that please?

19 MR. LEVY: Yes.

20 MR. SLATER: What is that?

21 MR. LEVY: That is my testimony.

22 MR. SLATER: Do you wish to make any changes in your
23 testimony?

24 MR. LEVY: I just had one change that I would make, and
25 that is on Page 2, Line 22. I would change the 250 number

1 to \$231, and on Line 23, following San Diego -- following
2 SDCWA, I would add CVWD.

3 MR. SLATER: For clarity purposes, could you read it as
4 it should read, the entire sentence?

5 MR. LEVY: In addition, it is my understanding that the
6 direct cost of such temporary fallowing would be modest,
7 relatively modest, such that at \$231 per acre-foot
8 (generally the average price proposed to be paid by San
9 Diego County Water Authority and CVWD).

10 MR. SLATER: Is your testimony otherwise true and
11 accurate?

12 MR. LEVY: Yes.

13 MR. SLATER: What is your position with the Coachella
14 Valley Water District?

15 MR. LEVY: I am the general manager and chief
16 engineer.

17 MR. SLATER: Does Coachella provide water for both
18 urban and agricultural use?

19 MR. LEVY: Yes.

20 MR. SLATER: How many acres are farmed within the
21 Coachella Valley?

22 MR. LEVY: About 70,000 acres.

23 MR. SLATER: Are you familiar with the general farming
24 practices both in Imperial and Coachella Valley?

25 MR. LEVY: Yes.

1 MR. SLATER: Have you, in your capacity as general
2 manager, ever designed or overseen programs for the benefit
3 of agricultural users?

4 MR. LEVY: Yes, both in terms of our irrigation system
5 and in terms of programs to assist our farmers in increasing
6 their water use efficiency by providing information.

7 MR. SLATER: Are you familiar with the land management
8 program being proposed by Metropolitan and PVID?

9 MR. LEVY: Yes.

10 MR. SLATER: Do you know whether that program includes
11 fallowing as a potential method of conservation?

12 MR. LEVY: Yes.

13 MR. SLATER: Do you have any personal experience and
14 knowledge of what direct costs a farmer incurs in preparing
15 a land for fallowing?

16 MR. LEVY: Yes.

17 MR. SLATER: What are those costs?

18 MR. LEVY: In terms of the Palo Verde program that was
19 done in the early '90s, the district was one of the agencies
20 that oversaw the program to make sure that the water was
21 actually being conserved in the program. And so I had staff
22 that monitored the different activities out there. The cost
23 in there was cost dealing with weed control and also making
24 sure that you didn't have any air quality problems. And
25 those ranged, I believe, between \$10 an acre to about \$60 an

1 acre.

2 MR. SLATER: Did you get a chance to look at the letter
3 from Mr. Canessa to Ms. Stapleton identified as San Diego
4 Exhibit 59?

5 MR. LEVY: Yes.

6 MR. SLATER: Does your general experience -- Withdraw
7 that.

8 Is your general experience consistent with that
9 reported by Mr. Canessa?

10 MR. LEVY: It appeared to me that his data matches
11 other data that I have seen.

12 MR. SLATER: Are you familiar with the socioeconomic
13 impacts section identified in the DEIR/EIS regarding the
14 transfer?

15 MR. LEVY: Yes.

16 MR. SLATER: And specifically regarding Alternative 4?

17 MR. LEVY: Yes.

18 MR. SLATER: Have you discussed or consulted with other
19 professionals with regard to the concern about potential
20 socioeconomic impacts that may result from a fallowing
21 program?

22 MR. LEVY: Yes.

23 MR. SLATER: If so, who have you talked to?

24 MR. LEVY: I have talked to Allen Kleinman. I have
25 talked to Ed Harvey. I have talked to -- let me back up.

1 Allen Kleinman is an economist with the Bureau of
2 Reclamation. Ed Harvey is an economist that -- a consulting
3 economist that does work for us. I've talked to Charlie
4 Moore who is another economist that looks at -- that works
5 for us on agriculture issues in there. I have talked to Joe
6 Lord who is an agricultural engineer on it, and I have
7 talked to my staff.

8 MR. SLATER: Based on your experience as a manager of
9 an ag and urban water district and based upon your personal
10 knowledge of farming practices in Coachella and Imperial and
11 your review of the PVID proposed program with Met and
12 supporting documents, do you believe that a similar program
13 could be made to work within the Imperial Irrigation
14 District?

15 MR. LEVY: Yes.

16 MR. SLATER: And specifically what measures do you
17 believe ought to be included in a fallowing program in the
18 event that IID in its discretion decides to pursue one?

19 MR. LEVY: I believe any fallowing program should
20 target the high water use crops and those that have low
21 market prices as the first element of any program. Because
22 those crops tend to be highly mechanized and have less
23 social economic impacts by the reduction of. In addition, I
24 think you have to make sure that you deal with the air
25 quality issues related to leaving lands fallow in the

1 area, and you need to deal with weed and other issues
2 related to creating problems later.

3 MR. SLATER: How would you do that, Mr. Levy?

4 MR. LEVY: Just trying to look at a hypothetical
5 program. It seemed to me if you look at the data in the IID
6 EIR/EIS on the transfer, they show that hay and pasture has
7 a gross revenue of about \$444 an acre-foot. If you look at
8 the average water use in Imperial Valley, that is about 5.13
9 acre-feet per acre. If you take the average price that San
10 Diego and Coachella will be paying of \$231 and multiply that
11 -- I'm sorry, and then back out of the program the water
12 that is currently running off the fields and using an
13 estimate of about 35 percent as being an average number, you
14 would end up with a little less than four acre-feet of water
15 available for transfer.

16 In doing that you have created a situation where you
17 would not be changing the reduction of inflow to the Salton
18 Sea over what it will be in the future because the same
19 amount of water would be coming off the field. So you end
20 up with a little less than four acre-feet times the \$231
21 price, which gives you a number, I think it came to, between
22 8- and \$900 an acre out there. If you subtract off the \$444
23 in there, and by paying the farmer \$444 to do the farming,
24 you could have him go through and actually do a phantom
25 farming operation where he would keep the same labor. He

1 would have all the same services. They just wouldn't create
2 any product because they wouldn't add any water to the
3 land.

4 In doing that you then end up with a situation where
5 you have the 400 -- you have zero social economic impacts on
6 the area. You then add to it about \$50 an acre for dealing
7 with the dust and weed problems on it, and then you don't
8 have -- the price of \$444 includes the payment to IID for
9 water. And so you then can taken and you don't have to add
10 for that. You add a management fee for IID and then a bonus
11 for the farmer.

12 You can do all that within the 8- to \$900 acre number
13 that San Diego and Coachella will be paying and not have any
14 social economic impact.

15 MR. SLATER: Only one more question. With regard to
16 your review of the proposed PVID program being that is being
17 pursued by Met and PVID, in your view, are measures
18 identified in that program and measures you have just
19 discussed compatible with Imperial still making a long-term
20 commitment to transfer water to San Diego and Coachella?

21 MR. LEVY: Yes.

22 MR. SLATER: I have no further questions.

23 CHAIRMAN BAGGETT: Let's take ten minutes and come back
24 at 2:25 for Mr. Osias.

25 (Break taken.)

1 CHAIRMAN BAGGETT: Back on the record.

2 Mr. Osias.

3 ---oOo---

4 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

5 BY IMPERIAL IRRIGATION DISTRICT

6 BY MR. OSIAS

7 MR. OSIAS: I don't have to introduce myself. We've
8 spent way too much time together.

9 Let me start with Mr. Levy, if I could, the first line
10 of your testimony for this rebuttal, Exhibit 49. I say the
11 first line. I'm wrong, it is in Paragraph 2. It states
12 that Coachella continues to believe that the QSA and the
13 protest dismissal agreement are in Coachella's best
14 interest. Right?

15 MR. LEVY: Yes.

16 MR. OSIAS: If you look at Exhibit 82 in that binder
17 that I put in front of you, that is IID Exhibit 82, do you
18 see the graph there?

19 MR. LEVY: Yes.

20 MR. OSIAS: The source of that graph is Coachella,
21 right?

22 MR. LEVY: I would suspect that it is. It doesn't give
23 a reference on it. It appears to me it is similar to the
24 ones we have made.

25 MR. OSIAS: One of the benefits that Coachella's

1 looking for is to eliminate seawater intrusion, which shows
2 up on the graph as happening about now?

3 MR. LEVY: Yes.

4 MR. OSIAS: Thank you.

5 In your correction of Exhibit 49 you used a \$231
6 average, which you said was the average price if you used
7 San Diego and Coachella payments, right?

8 MR. LEVY: Yes.

9 MR. OSIAS: How did you calculate that?

10 MR. LEVY: I gave it to one of my staff members and
11 asked him to go through the San Diego/IID agreement and the
12 QSA and add in -- figure out over the time period and then
13 come up with average cost.

14 MR. OSIAS: Is that a present value average cost or
15 just arithmetic --

16 MR. LEVY: That is in current dollars.

17 MR. OSIAS: You don't know -- if you did a simple \$250
18 times 200, 50,000 times 50, and 50,000 times 125, it doesn't
19 equal 231?

20 MR. LEVY: That's correct.

21 MR. OSIAS: Do you know how to get from that simple
22 arithmetic average to the 231?

23 MR. LEVY: I can tell you conceptually. And that is
24 you have different buildup curves, and you have the water
25 falling off, as you're aware under the QSA in, I think it is

1 45 years out, the second block of water drops off and so you
2 have to go out and build a spreadsheet with each of the
3 items in it and then go through and total those out and do
4 the arithmetic.

5 MR. OSIAS: Conceptually it is somewhat of a weighted
6 average using volumes of water times price?

7 MR. LEVY: Yes.

8 MR. OSIAS: Thanks.

9 Mr. Underwood, the new PVID program that is being
10 proposed, the goal is to allow all farmers in Palo Verde
11 Valley to sign up if they wish?

12 MR. UNDERWOOD: Correct. They've done an aggregate.
13 If there is some small acreage, they can aggregate so that
14 everybody could participate.

15 MR. OSIAS: Therefore, the proposal from Metropolitan
16 to PVID does not target any specific crop, does it?

17 MR. UNDERWOOD: No. We leave it up to the farmer.
18 When we were negotiating we were negotiating with farmers,
19 economists or attorneys. Nothing against economists or
20 attorneys.

21 MR. OSIAS: There is nothing that requires a farmer --
22 pardon me.

23 There is nothing that restricts a farmer to fallowing
24 on a specific kind of soil, correct?

25 MR. UNDERWOOD: Correct. Except logic and economics

1 would dictate.

2 MR. OSIAS: If he had reasons to prefer one crop, one
3 location at any given time so long as it was within your
4 rotation rules, it is his call?

5 MR. UNDERWOOD: Correct.

6 MR. OSIAS: I think you were asked, but I'll confirm, a
7 farmer has to sign up for the full 35 years?

8 MR. UNDERWOOD: This is a program for 35 years. It is
9 a long-term program as opposed to on again, off again and
10 temporary fallowing.

11 MR. OSIAS: There is no annual option or anything to
12 see who wants to fallow that one year?

13 MR. UNDERWOOD: No. Its payment structure is given
14 such that there is an up front.

15 MR. OSIAS: That is my next question. You actually pay
16 an up-front dollar per acre under this proposal, correct?

17 MR. UNDERWOOD: Correct.

18 MR. OSIAS: How much is that?

19 MR. UNDERWOOD: It's \$3,170. Basically, it is the
20 value of the land. Since you are tying up the land for 35
21 years, it is an encouragement for them to fully sign up.
22 Also, there was other provisions. They were seeking control
23 of the escalation rate, one year call, so that you could
24 increase the amount of water supply on a one year call to
25 the farmers. So it is an incentive program.

1 MR. OSIAS: When Metropolitan makes a call, it pays an
2 additional \$550 per acre?

3 MR. UNDERWOOD: Correct.

4 MR. OSIAS: Metropolitan can choose to call on the
5 water every year, correct?

6 MR. UNDERWOOD: Right. There is a minimum.

7 MR. OSIAS: And has to call on the water a minimum of,
8 ist it, one out of four years?

9 MR. UNDERWOOD: There is a minimum flow -- there is a
10 minimum revenue stream for the farmers. So there is a
11 minimum 25,000 acre-feet.

12 MR. OSIAS: That's about a fourth of the 111?

13 MR. UNDERWOOD: Correct. It was primarily to help
14 stabilize the economy. In other words, the farmer could
15 guarantee that he is going to be profitable for those
16 acreages for that period.

17 MR. OSIAS: So how frequently, in terms of years, would
18 a participating farmer fallow his ground?

19 MR. UNDERWOOD: There would always be something. In
20 other words, the 7 percent, in other words, the 6,000 acres
21 which give you 25,000 would be on an every year basis.

22 MR. OSIAS: Now if Metropolitan took the 111,000
23 acre-feet of water -- by the way, you used -- when you
24 testified as to volumes, you didn't say per year but you
25 meant per year, did you not?

1 MR. UNDERWOOD: Correct.

2 MR. OSIAS: So if Metropolitan made a call 111,000
3 acre-feet per water, of water, every year and made the
4 payments that we use discussed, what's the per acre-foot
5 price for that water?

6 MR. UNDERWOOD: Let me explain a little bit here. The
7 maximum amount of water we can take is roughly 3,630,000
8 acre-feet. If you take all of the costs, including our
9 community improvement program, and you amortize the up-front
10 payment, it translates to \$153 an acre-foot.

11 MR. OSIAS: If you take the minimum amount of water,
12 what is the per acre-foot price, using the same methodology?

13 MR. UNDERWOOD: Not only was the farmers interested in
14 having a minimum amount a year, but there were also minimum
15 for the overall program. If they only did 25,000 acre-feet
16 a year, wouldn't necessarily be viable for them. If you
17 take the minimum amount, which is 1.76 million acre-feet,
18 that translates to -- that same type of demand translates to
19 \$206 an acre-foot.

20 MR. OSIAS: Depending on how much water MWD orders,
21 which goes back to your variable component, the price per
22 acre-foot is 153 to 206, correct?

23 MR. UNDERWOOD: Correct. The idea is we probably use
24 interim surplus guidelines for the first 16 years, so you're
25 going to have lesser call than you would after the interim

1 surplus guidelines.

2 MR. OSIAS: Of course, that assumes certain things
3 happen by January?

4 MR. UNDERWOOD: Correct. But that is the beauty of
5 having a variable program.

6 MR. OSIAS: You mentioned you factored in the community
7 development payment. But, in fact, the PEIR -- I shouldn't
8 use that phrase -- the Draft EIR for the proposal Palo Verde
9 Project, which was just released, actually says that the
10 community development payment and socioeconomic impact
11 analysis are not in this EIR; they are going to be subject
12 to a separate study that is going to be released later?

13 MR. UNDERWOOD: Correct.

14 MR. OSIAS: We can't find in this EIR how much money is
15 going to be devoted to community impacts, correct?

16 MR. UNDERWOOD: Except I think it is in the EIR where
17 it talks about -- it doesn't take specific projects, but it
18 does talk about the amount of money being given. And the
19 present worth value is roughly \$6,000,000. It should be in
20 there.

21 MR. OSIAS: There is a maximum community impact payment
22 of \$6,000,000 present value?

23 MR. UNDERWOOD: Based on our prior test program is what
24 we thought was an amount. We voluntarily put up social
25 economic impact funds because we recognize from the test

1 program there was social economic. We also created a
2 committee to oversee. It's primarily made up of local
3 residents.

4 MR. OSIAS: The study that is coming isn't actually to
5 study what the impacts are, but merely how to spend the
6 \$6,000,000?

7 MR. UNDERWOOD: No.

8 MR. OSIAS: What the impacts --

9 MR. UNDERWOOD: It is a social economic assessment.

10 MR. OSIAS: It could come out identifying more than
11 6,000,000 in socioeconomic impacts?

12 MR. UNDERWOOD: There is a possibility that it could.
13 And if Metropolitan believes that it shows that, they would
14 potentially pay more.

15 MR. OSIAS: And the committee had Metropolitan on the
16 committee?

17 MR. UNDERWOOD: Correct. Along with Palo Verde
18 Irrigation District.

19 MR. OSIAS: And then some --

20 MR. UNDERWOOD: And a cross-section of the community.

21 MR. OSIAS: And we will get that report in a public
22 forum in about a month?

23 MR. UNDERWOOD: That's probably about right.

24 MR. OSIAS: At this date we can't at least use a study
25 of this program as compared to the test program; you don't

1 have a study on this program identifying what the
2 socioeconomic impacts could be?

3 MR. UNDERWOOD: But you do get a feel from the impact
4 of jobs, et cetera, that was on the test program.

5 MR. OSIAS: That was a two-year deal?

6 MR. UNDERWOOD: Correct. But it is still the same
7 amount -- you look at the 22 percent of the acreage, 20,000
8 acres, and we're looking in the beginning of not doing
9 20,000 acres.

10 MR. OSIAS: Based on certain assumptions, correct?

11 MR. UNDERWOOD: Correct.

12 MR. OSIAS: Now, Mr. Levy, the phantom farming jobs,
13 will they be hard to come by?

14 MR. LEVY: I am sure that you would qualify for one.

15 MR. OSIAS: In fact, in all seriousness I would be a
16 good phantom farmer, right, because I don't know anything
17 about farming, but I don't have to produce a crop?

18 MR. LEVY: Correct.

19 MR. OSIAS: In terms of categories of costs that ought
20 to be examined if land is fallowed for any long-term
21 commitment period, even if it's rotated, assuming there is a
22 long-term commitment like 35 years, IID should at least need
23 to identify and be compensated for its own administrative
24 costs, correct, for administering such a program?

25 MR. LEVY: Yes.

1 MR. OSIAS: It would lose hydropower if less water was
2 brought into the Imperial Valley?

3 MR. LEVY: Yes.

4 MR. OSIAS: Depending on whether the phantom farmer
5 paid for water he didn't take or not, there might be lost
6 water sale revenues, correct?

7 MR. LEVY: I'm sorry, I don't see --

8 MR. OSIAS: If the phantom farmer didn't send checks
9 for phantom water, then the Imperial Irrigation District
10 would lose water sale revenue?

11 MR. LEVY: Yes.

12 MR. OSIAS: On the other hand, if the farmer sent
13 checks and said but don't send any water, and it was for the
14 amount he otherwise would have ordered, there would be no
15 lost sales revenue, right?

16 MR. LEVY: I think under the phantom farming concept
17 that I visualized IID would get a management fee and I would
18 assume they would disburse the money and, therefore, knowing
19 the management of IID, they probably withhold the water
20 bill. They would withhold the payment for the water bill.

21 MR. OSIAS: I'm actually not asking about payments.
22 I'm just asking about categories of costs. So IID would
23 have a lost water sale cost unless it got payments for
24 phantom water that it delivered?

25 MR. LEVY: Yes.

1 MR. OSIAS: If the program had environmental impacts on
2 anything other than the Salton Sea, under your approach, IID
3 may have expenses associated with that mitigation?

4 MR. LEVY: Yes.

5 MR. OSIAS: The farmer and I think maybe Mr. Canessa
6 report that you referenced in your direct identified that
7 there would be a loss to the farmer or a cost, maybe is a
8 better word, a cost to the farmer for forgone return on his
9 land?

10 MR. LEVY: Yes.

11 MR. OSIAS: Purchased land. So the answer is yes?

12 MR. LEVY: Yes.

13 MR. OSIAS: And he'd have, again I guess, depending on
14 what he is paid, a potential for lost farm income at least
15 before being compensated he'd lose his profit from farming?

16 MR. LEVY: I guess I did a poor job of explaining at
17 least the phantom farming concept. Because as I visualized
18 it, you would pay the farmer the same gross revenue that he
19 currently is getting.

20 MR. OSIAS: If you didn't do that, he would lose his
21 profit. If you did that, he'd keep his profit because he'd
22 pay the same expenses and the difference would be his
23 historic profit?

24 MR. LEVY: Yes.

25 MR. OSIAS: Trying to go faster.

1 MR. LEVY: I just wanted to make sure that we were both
2 communicating.

3 MR. OSIAS: And then again subject to the payment
4 scheme, just listing the cost, he'd have potential stranded
5 capital investments besides the actual cost of the land in a
6 fallowed field?

7 MR. LEVY: If he did not receive any compensation.

8 MR. OSIAS: What I am trying to do is do the building
9 loss of what he is compensated for and then we can go back
10 and explore how to do that.

11 MR. LEVY: Okay.

12 MR. OSIAS: He might have diseconomies of scale; that
13 is, farming a larger operation may allow him to spread costs
14 over acres that if he farms less he can't even though --
15 because the shrinkage is not enough to lay off a whole
16 employee. He now has him sitting there idle for a third if
17 the economy scale is labor or it could be equipment use or
18 others. So there is a potential cost for economies of
19 scale; is there not?

20 MR. LEVY: Yes.

21 MR. OSIAS: You mentioned dust mitigation and weed
22 mitigation. Those would be potential costs?

23 MR. LEVY: Yes.

24 MR. OSIAS: There has been some discussion but no one
25 identified this yet this morning. Depending on how long

1 land sits and whether there are rain events and other sort
2 of hydrology events, there is risk of salt percolation to
3 the surface, which could require productivity expenses to
4 put the land back into production, correct?

5 MR. LEVY: Yes. I guess I do think those are fairly
6 small, but they are a category.

7 MR. OSIAS: And then if the property was in the
8 Williamson Act and if fallowing was held not to be a
9 consistent use, there would be some potential tax, property
10 tax consequences to the farmer, correct?

11 MR. LEVY: If the decision was made, which I don't
12 believe it would be made, that fallowing is on a temporary
13 basis, is inconsistent with the Williamson Act, there would
14 be an impact.

15 MR. OSIAS: Now if under the Palo Verde deal a farmer
16 signs up -- actually, let me back up.

17 Is your notion of temporary fallowing such that it
18 would be mandatory for a farmer to move fallowed parcels
19 around within his larger farm unit or could he choose to
20 leave one spot fallow if that is what he thought was best?

21 MR. LEVY: Conceptually I visualize a temporary program
22 where you would rotate through over some time period.

23 MR. OSIAS: I understood that is what you said. I
24 guess my question: Would that be required or is that
25 another one of those farmer things that lawyers and

1 economists and general managers should stay out of?

2 MR. LEVY: I think that is an issue that should be
3 looked at. My bias would be that you would have that as a
4 requirement.

5 MR. OSIAS: Now, Ms. Stapleton, I read your new
6 testimony which included, again, an important reference to
7 the win-win philosophy that San Diego and IID entered into
8 the transfer agreement. That is, in fact, was and is, in
9 fact, San Diego's goal; is it not?

10 MS. STAPLETON: Yes.

11 MR. OSIAS: This should be a win for San Diego and a
12 win for Imperial?

13 MS. STAPLETON: Yes.

14 MR. OSIAS: Not a win-tie or win-lose, but a win-win?

15 MS. STAPLETON: Correct.

16 MR. OSIAS: As you already explained -- actually let me
17 detour for one minute.

18 You did in your written testimony suggest that IID
19 should at least evaluate fallowing as an option, right?

20 MS. STAPLETON: Yes.

21 MR. OSIAS: You're aware that Senator Feinstein had
22 somewhat the same idea?

23 MS. STAPLETON: I saw the letter, if that is what
24 you're referring to.

25 MR. OSIAS: That is Exhibit 84 if you want to see it

1 again.

2 You are familiar with that letter from Senator
3 Feinstein to Imperial?

4 MS. STAPLETON: Yes, I did see the letter.

5 MR. OSIAS: You saw in the letter that she also
6 referenced that if the fallowing wasn't acceptable to
7 Imperial, that there was a threat that the federal
8 government would come, take the water without compensation.
9 Do you recall seeing that in the letter?

10 MS. STAPLETON: Yes, I do.

11 MR. OSIAS: San Diego, in fact, in no way supports the
12 federal government taking actions like that; isn't that
13 correct?

14 MS. STAPLETON: Yes. We are supportive of
15 Quantification Settlement Agreement and the water transfer,
16 and it is our goal to achieve both of those.

17 MR. OSIAS: And San Diego doesn't believe it would be
18 helpful to getting to that finish line for the QSA to
19 threaten, for the federal government to threaten Imperial?

20 MS. STAPLETON: I don't believe that it is helpful to
21 have this situation. It has caused a variety of problems
22 and concerns for all the parties involved.

23 MR. OSIAS: In fact, prior to negotiating the San
24 Diego/IID deal, you were aware that other agencies had at
25 times threatened to take Imperial's water, correct?

1 MS. STAPLETON: I had heard that rumor.

2 MR. OSIAS: You had actually studied it more than a
3 rumor, correct?

4 MS. STAPLETON: Yes. I am aware of other agencies
5 questioning the reasonable and beneficial use issue.

6 MR. OSIAS: San Diego determined that in order to
7 obtain a long-term, reliable supply a consensual arrangement
8 versus obtaining water through a possible taking was the
9 way to go?

10 MS. STAPLETON: Absolutely.

11 MR. OSIAS: That is still San Diego's view?

12 MS. STAPLETON: Yes.

13 MR. OSIAS: I take it that San Diego in no way
14 encouraged Senator Feinstein to include that language in the
15 letter?

16 MS. STAPLETON: Absolutely not. We were not aware of
17 that letter until we received a copy from an agency.

18 MR. OSIAS: Thank you. Now I will go back to where I
19 was going.

20 In terms of the win-win approach that San Diego had,
21 you already discussed that for San Diego in a long-term -- I
22 will do this in a summary fashion, if I can. If I leave
23 something out, feel free to throw it in. But a long-term,
24 large volume reliable, independent and fairly priced supply
25 of water was what it had in mind.

1 MS. STAPLETON: Very good, yes.

2 MR. OSIAS: And for Imperial it was to improve its
3 efficiency and thereby gain more safety from future
4 reasonable and beneficial charges and have at least no
5 negative economic impact in the Valley and potentially a
6 positive impact?

7 MS. STAPLETON: Yes. And I would add one more. I
8 believe that IID also was seeking that additional certainty
9 which came from the reasonable and beneficial use issue.

10 MR. OSIAS: There was actually in the San Diego deal a
11 notion that if parties objected to it, and we had a
12 contested finding here and a condition was getting a
13 reasonable and beneficial use --

14 MS. STAPLETON: Correct.

15 MR. OSIAS: -- order? Sorry.

16 In the future since any order is temporary the
17 efficiency improvements themselves added insulation?

18 MS. STAPLETON: Yes.

19 MR. OSIAS: Because of those win-win attributes that I
20 just described in part, the contract prohibited fallowing,
21 correct?

22 MS. STAPLETON: It was IID's desire to have a no
23 fallowing provision within the contract, and that was
24 important.

25 MR. OSIAS: And you know that was important because

1 even back in 1998, before any letters from Senators or
2 anything else, IID was fearful of the negative economic
3 impacts that fallowing could have?

4 MS. STAPLETON: Yes. I believe they were trying to
5 minimize the socioeconomic impacts, and San Diego was
6 willing to make the payment that would provide for on-farm
7 conservation.

8 MR. OSIAS: If IID produced water for transfer by
9 fallowing, San Diego would get all those benefits that I
10 summarized in my little win-win introduction, would it not?
11 The method of conservation doesn't affect any of those
12 benefits to San Diego?

13 MS. STAPLETON: Yes.

14 MR. OSIAS: On the other hand, if IID produces
15 conserved water for transfer by fallowing, some of the
16 objectives it had would no longer be satisfied?

17 MS. STAPLETON: I don't believe that is completely
18 true. I think it is -- the methodology in which that
19 program is implemented would have an impact on whether or
20 not those goals were achieved or not.

21 MR. OSIAS: The improved efficiency in the opportunity
22 to use that approved efficiency as it offends in any future
23 challenge would not be there?

24 MS. STAPLETON: Not necessarily as that would presume
25 that temporary fallowing would not be an acceptable

1 consideration for efficiency for IID. I believe that IID
2 was seeking protection against challenges of reasonable and
3 beneficial use, and if those protections are obtained and
4 you still move through a fallowing or land management
5 program, then you have achieved the IID goal of protection.

6 MR. OSIAS: You understood, I think you said, if not I
7 guess we can go back over it, that IID actually had
8 originally set out to get two things: a finding of
9 reasonable and beneficial use and improved efficiency for
10 the future in case anyone else challenged it after that
11 finding.

12 You remember saying that?

13 MS. STAPLETON: I think one is the what and one is the
14 how. The efficiency is how you achieve protection against a
15 challenge on unreasonable and beneficial use. So if I
16 misspoke earlier or did not make that clarification, I want
17 to know, that how you achieve it can vary.

18 MR. OSIAS: You understand that more parties in the
19 world than are in this room have the right to challenge
20 anyone's reasonable and beneficial use?

21 MS. STAPLETON: More parties in the world --

22 MR. OSIAS: In other words, it is not just Coachella or
23 Metropolitan or the State Board or San Diego?

24 MS. STAPLETON: Yes.

25 MR. OSIAS: Or the county?

1 MS. STAPLETON: Yes.

2 MR. OSIAS: In fact, in 1984 it was one farmer, was it
3 not?

4 MS. STAPLETON: Yes.

5 MR. OSIAS: So improved efficiency is a form of
6 reasonable and beneficial use insulation that doesn't depend
7 upon a party making a decision --

8 MR. SLATER: Calls for legal conclusion.

9 MR. OSIAS: How about if I finish?

10 CHAIRMAN BAGGETT: Let counsel finish the question.

11 MR. OSIAS: Thank you.

12 Improved efficiency doesn't require a court or State
13 Board to make a decision in the same way the decision would
14 be made if efficiency wasn't improved. You have different
15 facts, right?

16 MR. SLATER: Objection. Calls for a legal conclusion.

17 CHAIRMAN BAGGETT: Rephrase the question.

18 MR. OSIAS: Efficiency improvement creates facts that
19 agreements not to challenge reasonable and beneficial use
20 don't create; they are not the same thing, in other words?

21 Let me withdraw it. Let me ask you, you knew
22 reasonable and beneficial use protections, not just
23 momentarily but long-term, were a goal of IID?

24 MS. STAPLETON: Yes.

25 MR. OSIAS: Your new efficiency improvements was one of

1 the tools it intended to use?

2 MS. STAPLETON: Yes.

3 MR. OSIAS: That tool may be taken away if fallowing is
4 used. And I think you suggested that there may be other
5 things that can replace it?

6 MS. STAPLETON: No. I'm saying that the efficiency
7 tool, I do not believe the statement is correct that the
8 efficiency tool is taken away if IID fallows.

9 MR. OSIAS: I thought you were suggesting, but
10 something else will take its place?

11 MS. STAPLETON: No, no. I'm saying that you are
12 assuming that on-farm conservation is the only way to
13 achieve increased efficiency in IID, and I don't believe
14 that is correct.

15 MR. OSIAS: You were here for Dr. Mesghinna's
16 testimony, were you not?

17 MS. STAPLETON: No, don't believe I was.

18 MR. OSIAS: You haven't read it, the testimony?

19 MS. STAPLETON: I did not read his testimony.

20 MR. OSIAS: There was evidence here about how IID could
21 become more efficient. It talked about on-farm and system,
22 and those were the only two we identified?

23 MS. STAPLETON: That may be. That may be what he
24 testified, but I believe that there are other ways to
25 increase your efficiency.

1 MR. OSIAS: Now, in putting together this win-win in
2 the face of uncertainty, and let me describe that
3 uncertainty for a minute. In some of the exhibits you
4 attached I think internal memos of San Diego they
5 acknowledge that this long-term large transfer was
6 essentially unprecedented, you couldn't find this size and
7 this length anywhere in the state or maybe anywhere else; is
8 that right?

9 MS. STAPLETON: Correct.

10 MR. OSIAS: There was uncertainty about what would come
11 out of it?

12 MS. STAPLETON: Yes.

13 MR. OSIAS: As part of that uncertainty, IID and San
14 Diego each bargained for certain conditions that would have
15 to be satisfied or they would have no obligation to go
16 forward?

17 MS. STAPLETON: Correct.

18 MR. OSIAS: In connection with those conditions were
19 conditions relating to the environment?

20 MS. STAPLETON: Yes.

21 MR. OSIAS: And endangered species is a part of that
22 environment; is it not?

23 MS. STAPLETON: Environmental mitigation is part of the
24 environment, or is part of the contingencies.

25 MR. OSIAS: Mitigation for impacts to endangered

1 species would be considered environmental mitigation?

2 MS. STAPLETON: Yes.

3 MR. OSIAS: Not socioeconomic mitigation?

4 MS. STAPLETON: Correct.

5 MR. OSIAS: Want to make sure we are talking about the
6 same thing.

7 So IID I think said that they wanted the right to not
8 go forward if they had to spend more than \$15,000,000 to
9 start with plus a potential additional 15,000,000 for
10 unanticipated costs or overruns for environmental mitigation?

11 MS. STAPLETON: Correct.

12 MR. OSIAS: That was in 1998 dollars?

13 MS. STAPLETON: So that is about 16.2 million today for
14 each 15 components, correct?

15 MS. STAPLETON: Correct.

16 MR. OSIAS: Similarly, San Diego said if we have to
17 spend too much on environmental, we don't want to go
18 forward. So San Diego said if we have to spend more than
19 1,000,000 to start with and 1,000,000 for overruns or
20 unanticipated expenses in 1998 dollars, again, we want the
21 right to not go forward?

22 MS. STAPLETON: Correct.

23 MR. OSIAS: Neither party was obligated to go forward
24 if they had to pay more for environmental mitigation than
25 those caps?

1 MS. STAPLETON: Correct.

2 MR. OSIAS: San Diego's 2,000,000 in 1998 dollars is
3 about 2.1 million; is that right?

4 MS. STAPLETON: I'll take your word for it.

5 MR. OSIAS: You don't know?

6 MS. STAPLETON: I don't know the specific number.

7 MR. OSIAS: The fact they had no obligation to go
8 forward doesn't mean that they were totally without rights
9 because the contract provided for what we call backfill
10 rights. Do you remember that?

11 MS. STAPLETON: Yes, I do.

12 MR. OSIAS: Backfill right is the shorthand for a much
13 longer clause that says if IID does want to pay more than
14 the 15- or 30,000,000 for environmental mitigation, but San
15 Diego doesn't want to let them walk and cancel the deal, it
16 can volunteer to pay the extra?

17 MS. STAPLETON: Correct.

18 MR. OSIAS: And I used the word, importantly,
19 "volunteer" because San Diego wasn't obligated to do that,
20 just had the right to do that, correct?

21 MS. STAPLETON: Correct.

22 MR. OSIAS: And similarly, the other direction; it was
23 a mutual either direction clause?

24 MS. STAPLETON: Yes.

25 MR. OSIAS: You understand that under the QSA that's

1 now been expanded in terms of backfill to include
2 Metropolitan, Coachella, the state or the feds, correct?

3 MS. STAPLETON: Yes.

4 MR. OSIAS: So if environmental costs are too high and
5 above what any party obligated itself to pay, some other
6 party could pay the extra, correct?

7 MS. STAPLETON: Yes.

8 MR. OSIAS: We have learned, I guess about as recently
9 as anyone can learn, last week orally and during the lunch
10 break today, that mitigation for the Salton Sea impacts --
11 let me rephrase that. Mitigation of impacts on
12 environmental species who use the Salton Sea will not be
13 permissible by building a pond and a hatchery. Have I
14 described that accurately?

15 MS. STAPLETON: Yes.

16 MR. OSIAS: Thank you.

17 Instead, what Fish and Game and I guess Fish and
18 Wildlife Service want is if you are going to impact
19 endangered species with respect to the transfer, you
20 mitigate it by putting mitigation water back into the Sea?

21 MS. STAPLETON: I don't believe this letter concludes
22 that that is the only other alternative.

23 MR. OSIAS: This letter I don't think identifies
24 alternatives at all. I'm not focusing solely on the
25 EIR/EIS either.

1 In negotiations, which I guess you either attended or
2 have had reported to you, the efforts to mitigate reduced
3 flows to the Sea have failed, in terms of negotiations with
4 these agencies and, therefore, the solution for endangered
5 species impacts is to not reduce the flow to the Sea; isn't
6 that what they concluded?

7 MS. STAPLETON: That is one of the alternatives. What
8 they concluded, the four agencies were concentrating on the
9 fishery pond concept for a mitigation plan, and that we were
10 actively and collectively in pursuit of determining if that
11 would be permissible. Basically, this letter closes the
12 door to a fishery pond concept or, as it is referred to, the
13 pond option as a permissible for a mitigation plan for
14 on-farm conservation.

15 We have yet to hear from DFG if there are other
16 alternatives available that they are considering and/or
17 pursuing.

18 MR. OSIAS: That who's pursuing?

19 MS. STAPLETON: That DFG is considering or pursuing in
20 the sense of do they have any other ideas, concepts or
21 proposals that they would like to pursue with the agencies
22 to see if an alternative mitigation plan is doable.

23 MR. OSIAS: Isn't the process more fairly described as
24 that the agencies say, "We want a permit." The agencies
25 meaning the water agencies. The wildlife agencies say,

1 "Well, you are going to create impacts, so you have to
2 discuss with use how you're going to mitigate them." And
3 the water agencies say, "Well, we propose to do this to
4 mitigate," and then you get a reaction from the wildlife
5 agencies. Sometimes it is a conditional yes, sometimes it
6 is a conditional no. And you work to a final.

7 So the wildlife agencies aren't out to tell us how to
8 do this. Aren't they waiting for another suggestion?

9 MS. STAPLETON: Well, definitely waiting for another
10 suggestion that is not quite as linear as that. But we have
11 been working hand in hand with them for probably over six
12 months now in trying to pursue a mitigation plan.

13 MR. OSIAS: If IID -- let's focus on IID/San Diego for
14 a moment. If IID conserved 200,000 acre-feet for San Diego,
15 and it was determined that the impact -- let me back up.
16 Assume they conserve it in the way the contract says, 130-
17 on-farm, not fallowing, and the other 70- either on-farm or
18 system.

19 You understand my hypothetical?

20 MS. STAPLETON: Yes.

21 MR. OSIAS: That approach would reduce inflow to the
22 Sea by 200,000 acre-feet.

23 MS. STAPLETON: Correct.

24 MR. OSIAS: And that might create, I assume you'd use a
25 stronger worked than "might," an unacceptable impact on

1 endangered species in the eyes of Fish and Game?

2 MS. STAPLETON: I don't know it is an unacceptable.

3 MR. OSIAS: Will they permit it if we said we are going
4 to conserve 130- on-farm and conserve 70- by system and
5 since the Sea is dying anyway, we are not going to mitigate
6 for impacts on those endangered species?

7 MS. STAPLETON: If you did not mitigate, it would not
8 be permissible.

9 MR. OSIAS: We can't mitigate with a pond. So assume
10 we said, "Well, what if we find replacement water to put
11 into the Sea? And we'll put 200,000 more into the Sea for
12 the 200,000 we're cutting off and sending to San Diego."

13 Might they say yes to that?

14 MS. STAPLETON: They might.

15 MR. OSIAS: Have they suggested, in fact, that that is
16 something that they would like to see?

17 MS. STAPLETON: Replacement water?

18 MR. OSIAS: Yes.

19 MS. STAPLETON: They have not suggested that. Or maybe
20 they have raised that, that there are a lot of river
21 problems with water going into the Salton Sea.

22 MR. OSIAS: If you mitigate an environmental impact
23 that is created by an agricultural use, you believe that
24 there are problems if that mitigation involves putting water
25 into the Salton Sea?

1 MS. STAPLETON: There are problems if water directly
2 flows into the Salton Sea, Colorado River water flowing
3 directly into the Salton Sea.

4 MR. OSIAS: Even if the only reason that it is going
5 there is to mitigate an impact of some agricultural
6 activity?

7 MS. STAPLETON: My understanding is if it flows
8 directly to the Salton Sea it may be a problem as it relates
9 to the law of the river.

10 MR. OSIAS: You've formed that impression from
11 communications with Mr. Levy?

12 MS. STAPLETON: Mr. Levy, Mr. Underwood.

13 MR. OSIAS: Fish and Game, have they said the same
14 thing?

15 MS. STAPLETON: No, Fish and Game did not say the same
16 thing. It is mostly from, I would say, people who are
17 extremely familiar with the law of the river, the
18 limitations. Bureau of Reclamation would be an example.

19 MR. OSIAS: If I engaged in phantom farming and ordered
20 water --

21 MS. STAPLETON: Yes.

22 MR. OSIAS: -- and had all my employees watch it flow
23 across my field into the Salton Sea, since they were phantom
24 farming they didn't actually get to use the water, do you
25 think that would solve the people's problems who expressed

1 concern about it flowing directly into the Sea?

2 MS. STAPLETON: If that water was serving an
3 agricultural purpose by flowing across your field and into
4 the Sea, I believe that would be doable.

5 MR. OSIAS: The distinction is serving agricultural
6 purpose and flowing across the field?

7 MS. STAPLETON: Serving an agricultural purpose within
8 the service area of IID.

9 MR. OSIAS: If IID built a structure on a grebe, or one
10 of those other bird's nest that used the Sea and, therefore,
11 had to create a new nest with some water to mitigate its new
12 facility and deliver that water directly to the Sea, you
13 don't think it would be permitted to do that?

14 MS. STAPLETON: I do not believe it would be permitted
15 for the water to flow directly to the Sea for that purpose.

16 MR. OSIAS: If 200,000 acre-feet of mitigation water
17 was sought to flow over somebody's land directly into the
18 Sea, to avoid the law of the river absurdity, IID only
19 committed to spend on environmental mitigation 16.2 million
20 in today's dollars up front and maybe a potential 16.2
21 addition, correct?

22 MS. STAPLETON: Yes.

23 MR. OSIAS: So you could spend, let's ignore the up
24 front and the overrun, you could spend \$32.2 million to buy
25 200,000 acre-feet of water a year of replacement water for

1 45 years.

2 Do you think there is any water available at that price?

3 MS. STAPLETON: I do not know.

4 MR. OSIAS: Do you have any idea what that would be on
5 a per acre-feet basis?

6 MS. STAPLETON: No, I do not.

7 MR. OSIAS: Do you think it would be less than \$10 an
8 acre-foot?

9 MS. STAPLETON: For some reason I think you have the
10 number.

11 CHAIRMAN BAGGETT: He is asking a question. Answer,
12 please.

13 MR. OSIAS: You have no idea?

14 MS. STAPLETON: Thirty-two million over the life, the
15 75 years?

16 MR. OSIAS: Make it shorter, 45 years.

17 MS. STAPLETON: Yes. I do not believe the water would
18 be available at that price.

19 MR. OSIAS: If you spent all of IID's mitigation
20 budget, ignore any other environmental mitigation, and you
21 spent all of San Diego's mitigation budget, in current
22 dollars, that total is 34 and a half million bucks. And if
23 you bought 200,000 acre-feet of water a year with that
24 money, you'd have to find it at least then \$7 an acre-foot.

25

1 Does that sound about right?

2 MS. STAPLETON: Yes.

3 MR. OSIAS: Certainly your monitoring of prices doesn't
4 suggest that any volume like that is available in California
5 at that price?

6 MS. STAPLETON: Correct.

7 MR. OSIAS: Let me go to fallowing for one minute. If
8 instead of producing 200,000 acre-feet of water by using
9 pump back systems and recycling water or lining canals, you
10 instead created the full 200,000 by fallowing and
11 transferred all that 200,000 to San Diego, there is still a
12 reduction in inflow to the Sea, correct?

13 MS. STAPLETON: Yes, there is.

14 MR. OSIAS: It's about a third of that 200,000?

15 MS. STAPLETON: It is about -- actually, my
16 understanding is it is between a third and a half of it.

17 MR. OSIAS: So if we used 200,000, it is somewhere
18 between 60,000 and 75,000 acre-feet?

19 MS. STAPLETON: Yes.

20 MR. OSIAS: If we were going to try to buy 60- or
21 70,000 acre-feet of water a year with the full environmental
22 mitigation budget of San Diego and IID, for 45 years we'd
23 have to spend somewhere around or find the water for
24 somewhere around \$70 an acre-foot.

25 Does that sound about right?

1 MS. STAPLETON: Yes.

2 MR. OSIAS: You don't know of any volume of that size
3 available for 45 years at that price in California, do you?

4 MS. STAPLETON: No, I do not.

5 MR. OSIAS: Even if IID fallows to create the water,
6 mitigation water to the Sea, at a price that is not
7 available within the negotiated mitigation budgets. Isn't
8 likely to be available, correct?

9 MS. STAPLETON: I think the problem you are presuming
10 that if you move to a fallowing budget all of the other
11 elements of a deal between San Diego and IID would remain
12 intact. So I guess I'm uncomfortable representing that in
13 that, as you know, San Diego's price was dependent on a
14 variety of factors, including on-farm conservation costs.
15 In fallowing those factors have changed dramatically. So I
16 am uncomfortable saying that that 15,00,000 or the
17 30,000,000 or any of those would remain intact. That is
18 what -- I just don't feel comfortable saying, "oh, yes, that
19 wouldn't be available."

20 MR. OSIAS: Let's go back to the we produce the 200,000
21 exactly as we bargained for. That is on-farm efficiency
22 improvement and lining. You are now not uncomfortable with
23 the price, right, because we produced the water in the way
24 we bargained for?

25 MS. STAPLETON: Through on-farm conservation.

1 MR. OSIAS: Now you're comfortable. In that setting we
2 have no socioeconomic to mitigate, right?

3 MS. STAPLETON: Correct.

4 MR. OSIAS: In fact, we've got the economic stimulus we
5 had hoped for?

6 MS. STAPLETON: Right.

7 MR. OSIAS: So all we have to do is find 200,000
8 acre-feet of mitigation water at \$7 an acre-foot. That's a
9 problem, correct?

10 MS. STAPLETON: Yes.

11 MR. OSIAS: Isn't there a hundred thousand acre-feet of
12 farming in San Diego?

13 MS. STAPLETON: Yes.

14 MR. OSIAS: How much would it take to induce one of
15 those farmers to fallow so that that water could be used to
16 mitigate impacts on the Salton Sea?

17 MS. STAPLETON: Well, our farmers pay at retail level
18 somewhere between 5- and \$700 an acre-foot, and so it would
19 be economics just like any farmer. What is the value of
20 their crop, what is their cost, what are their profits, and
21 would the incentive be to have them fallowed to put water
22 into the Salton Sea.

23 MR. OSIAS: And they would look at all those cost
24 factors I sort of went through with Mr. Levy?

25 MS. STAPLETON: Yes, correct.

1 MR. OSIAS: So you don't know the answer to the
2 question of how much it would take to get them to fallow?

3 MS. STAPLETON: No, I do not.

4 MR. OSIAS: Have they ever been asked to fallow
5 voluntarily in exchange for a payment?

6 MS. STAPLETON: No, they have not.

7 MR. OSIAS: Either temporarily or permanently?

8 MS. STAPLETON: No, they have not.

9 MR. OSIAS: Has San Diego offered any additional money
10 to backfill environmental expenses to mitigate beyond their
11 2,000,000?

12 MS. STAPLETON: Beyond our 2,000,000?

13 MR. OSIAS: Yes.

14 MS. STAPLETON: Yes. We have entered into discussions
15 with the Bureau of Reclamation on a mechanism in which we
16 can mitigate our on-river impacts and we have worked with
17 them. It hasn't been finalized.

18 MR. OSIAS: But it will end up using up all of your
19 2,000,000 plus some extra money.

20 MS. STAPLETON: It may.

21 MR. OSIAS: Not for sure?

22 MS. STAPLETON: Not for sure until it's finalized.

23 MR. OSIAS: Has San Diego offered any moneys above the
24 2,000,000 to help mitigate impacts on the Salton Sea?

25 MS. STAPLETON: No. Because we do not have a

1 mitigation plan yet that is permissible, so we don't know
2 what the cost would be.

3 MR. OSIAS: Without know -- I guess there is two ways
4 you can do this. You can come up with a plan, take the cost
5 and then shop the cost to see who wants to pay, you can see
6 how much money can we raise and see if we can find a plan
7 that fits within that budget.

8 Has the approach been the former rather than the
9 latter?

10 MS. STAPLETON: Yes. I think that all of the parties
11 have been focusing on trying to identify a plan when you are
12 uncertain whether a plan can be put together or not. Just
13 for efficiencies it is better to focus on the plan than just
14 trying to go around just raising money for an unknown
15 mitigation plan.

16 MR. OSIAS: If IID conserved the full 300- for the QSA
17 deal --

18 MS. STAPLETON: Yes.

19 MR. OSIAS: -- and did it all by fallowing, about a
20 hundred thousand mitigation is still needed for impacts to
21 the Sea, correct?

22 MS. STAPLETON: Correct.

23 MR. OSIAS: If that water was purchased at PVID prices,
24 do you have any idea what the present value of that would be
25 for 45 years?

1 MS. STAPLETON: No, I do not.

2 MR. OSIAS: Would you believe that it was more than
3 \$500,000,000?

4 MS. STAPLETON: Could be. Yes, I would believe that.

5 MR. OSIAS: Mr. Levy, have you ever solicited farmers
6 in Coachella Valley to permanently fallow on a voluntary
7 basis in exchange for payments?

8 MR. LEVY: No.

9 MR. OSIAS: Have you asked them to do it on a temporary
10 basis in exchange for payments?

11 MR. LEVY: No.

12 MR. OSIAS: You have hay and alfalfa and Sudan grass
13 growing in the Coachella Valley, do you not?

14 MR. LEVY: Yes.

15 MR. OSIAS: They use about eight or nine acre-feet per
16 acre applied water?

17 MR. LEVY: Depends on their -- I think, based on
18 numbers for IID, I would think it's probably in the range of
19 six and a half to seven for alfalfa.

20 MR. OSIAS: Because that is the range that is used in
21 Imperial?

22 MR. LEVY: Yeah. I would think we would be close.

23 MR. OSIAS: The soils are heavier in Imperial than they
24 are in Coachella?

25 MR. LEVY: Yes.

1 MR. OSIAS: So there is more percolation in Coachella
2 Valley, generally?

3 MR. LEVY: Yes.

4 MR. OSIAS: So might need to apply more water to get it
5 down to the end of the field because you would lose a little
6 more to deep perc?

7 MR. LEVY: Depends on the length of run. Normally in
8 Coachella Valley the runs are much shorter than Imperial.

9 MR. OSIAS: So maybe seven acre-feet per acre, seven
10 acre-feet per acre of hay and alfalfa?

11 MR. LEVY: Yes.

12 MR. OSIAS: Has Coachella studied in connection with
13 its groundwater management plan asking those growers to
14 fallow those crops?

15 MR. LEVY: No.

16 MR. OSIAS: Has it asked those growers to fallow their
17 crops in connection with environmental mitigation for the
18 Salton Sea?

19 MR. LEVY: No.

20 MR. OSIAS: Does it believe that its farmers would be
21 willing to do so under your phantom fallowing program?

22 MR. LEVY: I think if the price was right, they
23 would. I would point out that as a percentage my
24 recollection is that the amount of alfalfa, hay and Sudan
25 grass that we have is a very small percentage of our total

1 amount of land.

2 MR. OSIAS: In fact, your total acreage under
3 irrigation is much smaller than Imperial's, too?

4 MR. LEVY: Yes. But I am saying on a percentage
5 basis.

6 MR. OSIAS: You probably have what, maybe 3,000 acres
7 of hay, alfalfa and Sudan grass?

8 MR. LEVY: I would think less than that, but I don't
9 have our crop report with me.

10 MR. OSIAS: It was about 2,000 in '96. Do you think
11 it's gone up since then?

12 MR. LEVY: I would suspect that it may have gone
13 down.

14 MR. OSIAS: Mr. Levy, on-farm efficiency in the lower
15 valley on irrigated crops is about 70 percent, correct?

16 MR. LEVY: I don't have the figure with me today.

17 MR. OSIAS: This is the November 2000 Draft Coachella
18 Valley Groundwater Management Plan. And on Page 22, under a
19 heading Agricultural Conservation, it currently reads: As
20 presented in Table 2, the goal is to reduce agricultural
21 demand for crop irrigation by approximately 7 percent by
22 2015. This corresponds to an increase in irrigation
23 efficiency from 70 to 75 percent.

24 Does that refresh your recollection?

25 MR. LEVY: Yeah.

1 MR. OSIAS: So about 75 percent is okay to use?

2 MR. LEVY: Yes.

3 MR. OSIAS: If IID transferred a hundred thousand under
4 the QSA to Coachella, as it is contracted to do, and
5 Coachella committed to use that water solely for
6 irrigation, in other words, not to put it into a groundwater
7 recharge bank, would not about 30 percent of that water flow
8 back to the Sea?

9 MR. LEVY: Yes.

10 MR. OSIAS: So the impact of that transfer if IID
11 created the water by efficiency improvements, transferred it
12 to Coachella who promised to use it only for irrigation, the
13 impact would be 70 percent of the 100-, so 70,000 rather
14 than a hundred thousand, correct?

15 MR. LEVY: With the caveat that there is a time lag in
16 that water getting to the Salton Sea.

17 MR. OSIAS: You have farms within the Coachella
18 jurisdiction that are very close to the Sea and then they
19 move farther up valley, correct?

20 MR. LEVY: Yes.

21 MR. OSIAS: I assume the time lag depends in part on
22 geography?

23 MR. LEVY: Yes.

24 MR. OSIAS: In the lower valley you have over --
25 roughly 330,000 acre-feet delivered to irrigated crops.

1 Does that sound right?

2 MR. LEVY: I believe that we deliver about 300-, 290-
3 to 300,000 acre-feet. The 330- number I think that you are
4 using is diversions from the river, so there is loss.

5 MR. OSIAS: If IID transferred a hundred thousand to
6 Coachella and not only did it to commit to use it for
7 irrigation rather than recharge, but also in the area
8 closest to the Sea we could reduce the lag time that might
9 be there for that return flow, correct?

10 MR. LEVY: Yes.

11 MR. OSIAS: Therefore, the mitigation obligation to the
12 Sea in terms of makeup water, rather than been a hundred,
13 might be only 70-, correct?

14 MR. LEVY: Yes.

15 MR. OSIAS: Has that approach been explored in terms of
16 the negotiations with Fish and Game?

17 MR. LEVY: No.

18 MR. OSIAS: Similarly, I suppose, Ms. Stapleton, if IID
19 transferred 200,000 to San Diego, which created a 200,000
20 acre-feet reduced flow to the Sea, San Diego could choose to
21 leave 70,000 behind and go into the Sea as mitigation,
22 leaving a reduction of only 130- left to mitigation rather
23 than full 200-, right?

24 MS. STAPLETON: If it was through on-farm conservation?

25 MR. OSIAS: Yes.

1 MS. STAPLETON: Yes.

2 MR. OSIAS: And San Diego would still get the full 130-
3 minimum that it was hoping to receive in San Diego, right?

4 MS. STAPLETON: Yes. We get the 130- up to 200-.

5 MR. OSIAS: I take it that approach has not been
6 suggested to Fish and Game or Wildlife Services to reduce
7 the impact?

8 MS. STAPLETON: No.

9 MR. OSIAS: Thank you.

10 CHAIRMAN BAGGETT: Thank you.

11 Salton Sea, do you have a lengthy cross?

12 MR. KIRK: Would be a half hour.

13 CHAIRMAN BAGGETT: Let's take five minutes.

14 We are recessed.

15 (Break taken.)

16 CHAIRMAN BAGGETT: Back on the record with Salton Sea
17 cross-examination.

18 ---oOo---

19 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

20 BY SALTON SEA AUTHORITY

21 BY MR. KIRK

22 MR. KIRK: Good afternoon, panelists.

23 Let's start off where we left off. The last series of
24 questions dealt with perhaps other strategies for mitigating
25 the impacts of the proposed conservation transfer program.

1 One alternative that was suggested or at least a question
2 was offered, what about conducting on-farm conservation,
3 transferring some water to, let's say, San Diego and then
4 conducting on-farm conservation to mitigate those impacts.

5 Mr. Levy, does that make a lot sense to you?

6 MR. LEVY: No.

7 MR. KIRK: Why?

8 MR. LEVY: It would seem to me that you are just in
9 effect double counting because you're reducing -- in the
10 first case you're reducing the water going into the Sea and
11 then in the second case you're reducing the water going into
12 the Sea to make water to go into the Sea. So you just move
13 the amount of water from here to here and you are still left
14 with the same net deficit.

15 MR. KIRK: In fact, by moving that 70,000 acre-feet of
16 water generated to mitigate impacts, the only impacts you
17 are mitigating is from the 70,000 acre-foot of on-farm
18 conservation; isn't that correct?

19 MR. LEVY: I believe so. I am not sure that I
20 understood the original question from Mr. Osias.

21 MR. KIRK: Mr. Underwood, do you have a perspective on
22 that?

23 MR. UNDERWOOD: Only in the sense of what we've been
24 doing since we've been doing the studies. We looked at
25 on-farm conservation, knowing that it was going to have

1 environmental mitigations attached to it. And then looking
2 at the spectrum of what is the least environmental impacts,
3 and that is where you got into some of the following
4 programs and the following concepts.

5 MR. KIRK: Mr. Levy, another suggestion that was
6 offered is perhaps by conserving water in the Imperial
7 Valley and sending that to the Coachella Valley, that might
8 mitigate impacts, and I am sure you would like it if it, in
9 fact, did.

10 Does it, in fact, reduce the impacts from that water
11 that is being conserved, conserving water -- let me restate
12 the question.

13 Conserving water through on-farm conservation and
14 sending it to Coachella has fewer impacts on the Salton Sea
15 than sending it to San Diego?

16 MR. LEVY: Yes.

17 MR. KIRK: By conserving water and sending it to San
18 Diego and then conserving water, in both cases through
19 on-farm conservation, and sending it to Coachella are you in
20 any way mitigating impacts of the water conserved for the
21 San Diego portion of that deal?

22 MR. LEVY: Let me make sure I understand the question.
23 If you conserve water for San Diego and conserve water for
24 Coachella and you transfer then, does the Coachella water
25 mitigate for the San Diego water? No.

1 MR. KIRK: Thank you.

2 Do any of you suspect that Fish and Game would consider
3 that an acceptable mitigation strategy?

4 MR. LEVY: No.

5 MR. KIRK: Ms. Stapleton, you've introduced some new
6 evidence related to Fish and Game. In the past you've
7 offered some new information on Fish and Game's
8 determination of the acceptable of HCP No. 1; isn't that
9 true?

10 MS. STAPLETON: Yes.

11 MR. KIRK: It sounds as if you were aware of the
12 significant issues that have been raised in this hearing
13 process about unreasonable impacts on fish and wildlife
14 resources at the Salton Sea associated with the proposed
15 project?

16 MS. STAPLETON: Yes.

17 MR. KIRK: You probably heard something about
18 significant concerns about the HCP No. 1 as well raised in
19 this process, selenium impacts, eutrophication, species
20 appropriate, that composition of species, et cetera, et
21 cetera?

22 MS. STAPLETON: Yes.

23 MR. KIRK: You probably heard something about criticism
24 of the Pacific Institute proposal which was a similar vein,
25 using drain water or inflow water to provide some habitat as

1 replacement for what is lost at the Salton Sea?

2 MS. STAPLETON: Yes, I have heard criticism of that.

3 MR. KIRK: Do you think all those factors played into
4 Fish and Game's decision to put a stop to discussions on the
5 HCP No. 1?

6 MR. SLATER: Objection. Calls for speculation.

7 MR. KIRK: You've been a party to these discussions
8 with Fish and Game?

9 MS. STAPLETON: Yes.

10 MR. KIRK: Have they expressed any similar concerns
11 that have been raised in the hearing process and, in fact,
12 in the EIR/EIS process about the fish ponds, and have they
13 indicated that that might be a factor in their decision
14 related to the letter you have offered as testimony?

15 MS. STAPLETON: They have indicated that for or in our
16 conversations set forth a variety of reasons, and you've
17 mentioned a number of them, such as selenium and temperature
18 and so forth, that they felt that the fishery and pond
19 concept was not permissible under the CESA requirement.

20 MR. KIRK: If Fish and Game does not permit the ponds,
21 it appears, and I think this is where Mr. Osias was going as
22 well, it appears that some strategy involving fallowing
23 might take its place?

24 MR. LEVY: That is an alternative that has been
25 suggested.

1 MR. KIRK: Do you know of any other alternatives that
2 have been suggested that are considered viable at this
3 point?

4 MS. STAPLETON: The only other alternative that was
5 raised was an off-site mitigation which a number of entities
6 have a concern about.

7 MR. KIRK: You have testified that in the early
8 discussions with IID every effort was made to fashion a
9 win-win environment for San Diego and IID; isn't that
10 correct?

11 MS. STAPLETON: Yes.

12 MR. KIRK: Win-win implies two parties, does it not?

13 MS. STAPLETON: Yes.

14 MR. KIRK: Was the environment represented in those
15 discussions, in any direct way an environmental group, the
16 Salton Sea Authority or others as a part of the win-win?
17 Was it win-win-win-win? Were there other parties at the
18 table?

19 MS. STAPLETON: At the time the negotiations took place
20 between IID and San Diego, we received information from the
21 Department of Interior that the Salton Sea reclamation
22 effort was being dealt with separate and apart from the
23 water transfer. And at the time that both the QSA and the
24 water transfer agreements were executed, it was both
25 parties' belief that the Salton Sea reclamation effort would

1 be handled independently and actually in advance of the
2 implementation of the proposed water transfer. And as you
3 know that did not happen.

4 MR. KIRK: Right.

5 However, these were largely two-party negotiations;
6 there wasn't any third party there representing the
7 interests of the environment?

8 MS. STAPLETON: No.

9 MR. KIRK: Is it fair to say that this win-win that was
10 fashioned was becoming win-win-lose and the lose being the
11 environment, given that significant concerns that have been
12 raised with respect to the proposed project?

13 MS. STAPLETON: Well, I think until the methodology,
14 and we have pursued the methodology for conserving water, I
15 wouldn't conclude that quite yet.

16 MR. KIRK: Under the proposed project as offered in the
17 EIR/EIS, which you have expressed your own concerns about in
18 terms of the environmental impacts, is it fair to say that
19 that does not appear to be a win for the environment?

20 MS. STAPLETON: The on-farm conservation is a problem
21 for the environmental issues around the Salton Sea.

22 MR. KIRK: Thanks for clarifying that. You were asked
23 many questions about your understanding of the law of the
24 river. Are you an expert in the law of the river?

25 MS. STAPLETON: No, I am not. I am knowledgeable of

1 the law of the river.

2 MR. KIRK: Would you defer to one or both of the
3 gentlemen sitting to your right on some of those issues?

4 MS. STAPLETON: Yes, I would.

5 MR. KIRK: At least in some cases?

6 MS. STAPLETON: Yes, depending on their answer.

7 MR. KIRK: We'll see how it goes.

8 All three of you sound like, and correct me if I am
9 wrong, if am I wrong with respect to this characterization.
10 All three of you are suggesting that alternatives that
11 utilize fallowing in some fashion could and should be
12 considered to conserve and transfer this water? Is that a
13 fair statement?

14 MS. STAPLETON: I believe that all three of us believe
15 that it is one methodology which should be looked at and
16 considered in part of this process to get from here to
17 success.

18 MR. LEVY: I will agree with that answer.

19 MR. UNDERWOOD: I will, too.

20 MR. KIRK: You are all somewhat familiar with the
21 transfer EIS/EIR and the alternatives contained therein.
22 Alternative 4 is the fallowing alternative.

23 I will direct most of these questions to you, Mr.
24 Underwood, but I will head back to the other two of you in a
25 moment.

1 Alternative four, is it your understanding that that
2 alternative is a delivered water fallowing alternative or a
3 direct water fallowing alternative?

4 MR. UNDERWOOD: Correct.

5 MR. KIRK: What does that mean?

6 MR. UNDERWOOD: That means if you are fallowing the
7 lands, all the waters that would have been used on that land
8 are, in fact, transferred.

9 MR. KIRK: That does reduce environmental impacts when
10 compared to a like amount of conserved water and
11 transferred water under an on-farm conservation program,
12 correct?

13 MR. UNDERWOOD: Correct.

14 MR. KIRK: We heard, I think it was, Mr. Osias suggest
15 one-third of the impacts, is that --

16 MR. UNDERWOOD: That is correct.

17 MR. KIRK: At least with respect to some resource
18 issues?

19 At PVID your past, current and future programs at PVID,
20 is that direct or delivered water fallowing that you're
21 employing there?

22 MR. UNDERWOOD: There is a difference here. Is that in
23 Palo Verde any water not used goes back to the river.

24 MR. KIRK: The water not used has a reasonable and
25 beneficial use downstream?

1 MR. UNDERWOOD: Right. It makes up for somebody else's
2 use.

3 MR. KIRK: Do you know of any other program in the
4 state of California that ever used a direct water or
5 delivered water fallowing to generate water for a transfer?

6 MR. UNDERWOOD: Only I think in the case of water
7 shortage, when the state did a water bank.

8 MR. KIRK: Not purely voluntary such instance without
9 the specter of an emergency hanging over head?

10 MR. UNDERWOOD: No. I think it's always been
11 short-term.

12 MR. KIRK: Is that generally because, again, there is
13 some value to the water flowing downstream from these parts?

14 MR. UNDERWOOD: Correct. And it is also given the
15 conditions that you are under shortage conditions.

16 MR. KIRK: The on-farm conservation, do you know of any
17 other instance other than Metropolitan's own agreement with
18 IID in the state of California that has utilized on-farm
19 conservation to conserve and transfer water?

20 MR. UNDERWOOD: No, I do not.

21 MR. KIRK: Why don't you think that is done more
22 often?

23 MR. UNDERWOOD: I think it all depends on -- comes
24 under a couple factors. One is that in the case of the
25 Colorado River you have lower priorities and there is

1 inadequate supplies. So there is a natural situation to
2 improve efficiency so that water can be made available. You
3 don't get those circumstances necessarily in other parts of
4 the state, or they have other alternatives.

5 MR. KIRK: In the case of on-farm conservation or
6 efficiency improvements, isn't it, in fact, the case as in
7 the case of this proposed project and in the case of the
8 1988 agreement that you are conserving downstream water?
9 You are conserving a lot of the water that would have flowed
10 into the Salton Sea?

11 MR. UNDERWOOD: Correct.

12 MR. KIRK: In fact, on a one-to-one basis, and we have
13 talked about that before?

14 MR. UNDERWOOD: Correct.

15 MR. KIRK: That might be one factor, one reason, that
16 it is not being done on the Colorado River. As you've
17 indicated, that there is some use downstream that is waiting
18 for that water, that values that water?

19 THE COURT REPORTER: I need an answer.

20 MR. UNDERWOOD: Yes.

21 MR. KIRK: I've forgotten Mr. Osias' caution to various
22 witnesses that you could please respond verbally.

23 Is the evapotranspiration or consumptive use
24 fallowing, that is employed in other instances, and that is,
25 in fact, what you are doing at Palo Verde; is it not?

1 MR. UNDERWOOD: Basically, right. There the water is
2 being for downstream purposes.

3 MR. KIRK: In those cases there are no impacts
4 downstream; is that correct? You are basically conserving
5 water that would have been used by the crop?

6 MR. UNDERWOOD: Right. The water released and the DMS
7 are considered in the amount of flow through, unused waters
8 that would be return flows from Palo Verde Irrigation
9 District.

10 MR. KIRK: Generally, it is your understanding in this
11 state and perhaps in the western U.S., when water is
12 conserved by agricultural interest and agencies it is
13 generally done through an ET-type fallowing program?

14 MR. UNDERWOOD: Waters remained in storage,
15 potentially, or made available to others.

16 MR. KIRK: Does MWD support IID considering that sort
17 of fallowing program as a part of this conservation and
18 transfer program?

19 MR. UNDERWOOD: Yes. When we were looking at, like I
20 said before, the least environmental impacts. You could
21 have some tradeoffs, obviously, with social economic
22 impact.

23 MR. KIRK: But Metropolitan -- you and Metropolitan
24 consider ET fallowing as an acceptable way of conserving and
25 transferring this water?

1 MR. UNDERWOOD: It is a way that should be looked at,
2 yes, in terms of its impact.

3 MR. KIRK: Ms. Stapleton, one question on some law of
4 the river related questions indicated that she didn't think
5 that water could flow directly to the Salton Sea. Is that
6 your understanding as well?

7 MR. UNDERWOOD: Correct.

8 MR. KIRK: Do you believe, however, that through some
9 kind of ET fallowing program or transitional fallowing, we
10 could have our cake and eat it too, conserve and transfer
11 the water and maintain flows to the Salton Sea?

12 MR. UNDERWOOD: If the water was used in terms of the
13 contract purpose and in accordance with the contracts.

14 MR. KIRK: Do you believe that could be accomplished
15 here?

16 MR. UNDERWOOD: There is a way, yes.

17 MR. KIRK: What is that way?

18 MR. UNDERWOOD: This gets back into what we refer to or
19 had referred to as transitional evapotranspiration
20 fallowing. Before we were talking about acre-foot per acre
21 if it was on-farm. If you take direct water, direct
22 fallowing, it was all waters that were going to be
23 potentially applied to the lands. If you do what we refer
24 to as evapotranspirational fallowing, then you are just
25 taking the waters that would be used, that would have been

1 lost anyhow. Wouldn't have gone into the Sea because it is
2 evapotranspiration, consumptive use. The waters that
3 otherwise would have gone to the Sea you apply for land
4 maintenance and management since that would be consistent
5 with a contract purpose.

6 Basically you would have those waters would end up in
7 the Sea. It would help those lands that are being rotated,
8 the same way that you rotate a crop, that would rotate for
9 the maintenance and management of those lands. In effect,
10 then, you would have no impact on the Sea.

11 MR. KIRK: Under that strategy and assuming all the
12 other terms of the QSA were met, would Metropolitan
13 challenge IID on its reasonable and beneficial use of
14 water?

15 MR. UNDERWOOD: No. I think so long as -- the key is
16 that people are making the transfers consistent with the
17 schedule. Because that has an impact on either the
18 availability of surplus water or water available to lower
19 priority users. If it was being consistent with that and
20 hopefully down the road that you would be doing this on a
21 transitional period phase, and that you may, depending on
22 the results for the Salton Sea reclamation, you could very
23 well turn back to on-farm conservation sometime in the
24 future. You would avoid the impacts that otherwise would
25 have occurred.

1 MR. KIRK: Would Metropolitan Water District of
2 Southern California be willing to put that in writing, that
3 they would accept some form of ET fallowing program and not
4 challenge IID's reasonable and beneficial use of water?

5 MR. UNDERWOOD: Yes. We have looked at some other --
6 some of the agreements we have looked at and have worked on
7 language that recognizes, as opposed to just conservation,
8 that you are doing fallowing. In fact, fallowing is
9 recognized in the Quantification Settlement Agreement as a
10 conditional means outside of the San Diego/IID transfer.

11 MR. KIRK: Mr. Levy, as essentially the last couple of
12 questions I posed to Mr. Underwood, would you respond to
13 those. And I can restate them if you would like.

14 MR. LEVY: You will have to restate them. I would not
15 want the record to have me answering the wrong question.

16 MR. KIRK: Does CVWD -- do you concur with Mr.
17 Underwood's assessment that there is a way under the law of
18 the river to undertake an ET fallowing-type program and/or
19 transitional fallowing and/or mitigation fallowing, conserve
20 that water for the water transfers and the terms of the QSA
21 and, in fact, mitigate the impacts on the Salton Sea?

22 MR. LEVY: I am afraid I don't understand your
23 question.

24 MR. KIRK: I will simplify it. Do you believe -- do
25 you concur with Mr. Underwood that there are mechanisms

1 under the law of the river to conduct, to implement an ET
2 fallowing-type program for this water transfer?

3 MR. LEVY: I believe that there are ways under the law
4 of the river that you can implement what I believe you are
5 calling an ET fallowing program that would allow the water
6 to be put to reasonable and beneficial use and ultimately
7 find its way to the Salton Sea.

8 MR. KIRK: And avoid or minimize impacts on the Salton
9 Sea; is that a fair --

10 MR. LEVY: And not increase the impacts on the Salton
11 Sea over the impact that will occur without the transfer.

12 MR. KIRK: If such a program were to be designed, would
13 CVWD accept that program as a reasonable and beneficial use
14 of water within the Imperial Irrigation District?

15 MR. LEVY: I'm afraid, if you're saying in the absolute
16 or are you saying in the context of it being an element of
17 the QSA?

18 MR. KIRK: In the context of it being an element of the
19 QSA to begin with?

20 MR. LEVY: Yes.

21 MR. KIRK: In the absolute?

22 MR. LEVY: Yes.

23 MR. KIRK: In both cases?

24 MR. LEVY: I'm sorry, no. Only in the case of the
25 QSA.

1 MR. KIRK: I shouldn't have clarified. I like the
2 first answer better.

3 Ms. Stapleton, same question generally to you. I will
4 try to make it simple, but you heard some of the
5 background.

6 Would San Diego County Water Authority challenge IID in
7 terms of reasonable and beneficial use if, in fact, it
8 pursued some form of ET following or transitional following
9 to implement its portions of the QSA?

10 MS. STAPLETON: No, we would not challenge.

11 MR. KIRK: Thank you.

12 Couple more questions for you, Ms. Stapleton. You
13 appear to have the latest information on Fish and Game's
14 determinations, so I will talk a little bit about that.

15 If, in fact -- you testified that if Fish and Game is
16 not willing to permit the fish ponds, the fish ponds are off
17 the table. I presume that is your testimony?

18 MS. STAPLETON: Correct.

19 MR. KIRK: Do you recognize that there are -- there has
20 been some testimony offered in this process and probably in
21 the comments to the transfer EIS/EIR that suggest that even
22 with the fish ponds the impacts on the Salton Sea are
23 unreasonable in terms of fish and wildlife issues?

24 MS. STAPLETON: Yes, I am aware of those comments.

25 MR. KIRK: If you pull the fish ponds as a mitigation

1 out from under the EIR rug, would you agree with me that the
2 impacts could be even more severe if the proposed project
3 were to go through and there were, in fact, no mitigation,
4 no fish ponds?

5 MS. STAPLETON: Yes, it would be even more severe than
6 the proposed fish pond option.

7 MR. KIRK: Thank you very much.

8 CHAIRMAN BAGGETT: Thank you.

9 PCL.

10 ----oOo----

11 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

12 BY PLANNING AND CONSERVATION LEAGUE

13 BY MS. DOUGLAS

14 MS. DOUGLAS: Good afternoon. I seem to be seeing
15 more and more of you three over the last couple months.
16 It's good to see you again.

17 As you know, I am Karen Douglas with PCL. I would like
18 to start a couple questions for Mr. Underwood.

19 In your testimony, and you may like to turn there, to
20 Page 3, you talk about the proposed 35-year land management
21 program with PVID. And one of the things you say on Line 17
22 is that the crops most likely to be displaced by the program
23 are hays and grains, higher vegetable crops such as --
24 higher value crops such as vegetables and melons are less
25 likely to be affected.

1 Do you see that?

2 MR. UNDERWOOD: Yes.

3 MS. DOUGLAS: Can you explain why that is?

4 MR. UNDERWOOD: Primarily because they are lower
5 value. Farmers are smart enough to recognize these. He's
6 not going to fallow his crops that are giving him the
7 greatest profit.

8 MS. DOUGLAS: That makes sense to me.

9 Now we have heard testimony, though, that farmers tend
10 to have a crop rotation over their land so they might farm
11 seven crops and alfalfa might be part of the rotation, and
12 somehow this would make it more difficult to target lower
13 value crops.

14 Is that -- did you find that to be the case in the
15 Palo Verde case?

16 MR. UNDERWOOD: No. They would go through a -- to my
17 knowledge, they do not go through the same type of a cycle.
18 They do alternate crops. Keeping in mind that the
19 predominant crop is alfalfa and Sudan Grass, wheat, cotton;
20 and out of those wheat, Sudan Grass and alfalfa the more
21 likely candidate for crop rotation.

22 MS. DOUGLAS: In terms of -- now you said that, I guess
23 -- did you say alfalfa and Sudan grass are the most likely
24 candidates for fallowing?

25 MR. UNDERWOOD: Yes, because of the low value. From

1 the beneficial part, is that they are less labor intense, so
2 you have less social economic impacts.

3 MS. DOUGLAS: Are the cost of producing those crops as
4 high for the farmer's investment or input into sort of
5 farmer's cost in producing an acre of alfalfa?

6 MR. UNDERWOOD: Let me put it this way: When we are
7 dealing with the annual payment, we have two payments on the
8 proposed Palo Verde Program. One is an annual payment. It
9 takes into account the land maintenance cost and the
10 fallowing cost. The other price that we try to look at what
11 we thought was a reasonable, better than average profit,
12 based primarily on alfalfa. So there would be an incentive
13 for him not to grow. He could do better economically than
14 growing the crop.

15 MS. DOUGLAS: How much is a better than average profit?

16 MR. UNDERWOOD: I think you're probably best to ask
17 somebody else. I know what you are talking about.

18 MS. DOUGLAS: You say below here that land managers
19 control weed growth and wind erosion would be an integral
20 part of the proposed program.

21 Were they parts of the two-year test program as well?

22 MR. UNDERWOOD: Yes. There was a requirement that they
23 had to develop a land management plan, similar type of
24 actions would be required, and it would be consistent with
25 the soil conservation, land erosion standards and methods.

1 MS. DOUGLAS: What sort of wind erosion methods are
2 there?

3 MR. UNDERWOOD: You would look at stubble. In other
4 words, you leave stubble on from a crop on the field to keep
5 the soils from eroding. They also looked at sod remnants or
6 they call clod plowing where you wet the soil and you plow
7 it and it forms a harder surface, and there is also -- you
8 can use cover crops, channel root cover crops that only rely
9 on precipitation, so you are not increasing the use of
10 water. Those are four methods.

11 MS. DOUGLAS: Did you find that that increased
12 fallowing in the Palo Verde situation increased air quality
13 problems due to dust?

14 MR. UNDERWOOD: For the two-year period, not to my
15 knowledge. Like I said, because you are doing land
16 management practices, you would hope that it would even be
17 less.

18 MS. DOUGLAS: In terms of the Draft EIR/EIS that you
19 guys have for the expanded program, have you looked into air
20 quality issues?

21 MR. UNDERWOOD: Only from -- if you read through the
22 document, it does talk about it and talks about the methods
23 for air quality. In other words, dust control and
24 particles, et cetera. It comes to the conclusion, yes, that
25 it should be no worse and potentially better.

1 MS. DOUGLAS: Has there been any measuring during the
2 period of the test program that you are aware of?

3 MR. UNDERWOOD: Not that I am aware of.

4 MS. DOUGLAS: It says on the next page, Page 4, that
5 there were payments. In addition to payments to farmers
6 there are payments to PVID to cover administrative costs and
7 community development projects.

8 What did you pay, do you know, for administrative costs?

9 MR. UNDERWOOD: We've set aside -- I don't -- to tell
10 you the truth I don't know. I know it is in the hundreds of
11 thousands of dollars, and it is indexed, and I just don't
12 remember the figure right now. It is either a hundred or
13 300. I think it is a hundred thousand. I am getting a nod
14 from somebody, so it's a hundred thousand that is indexed.

15 MS. DOUGLAS: I don't know. In terms of community
16 development projects, is that basically the socioeconomic
17 mitigation?

18 MR. UNDERWOOD: Correct.

19 MS. DOUGLAS: You said earlier that was about 6,000,000?

20 MR. UNDERWOOD: It is -- at its present worth it is
21 300,000 a year over the period of time. If you do the
22 calculations it is up to about 16,000,000 in present worth.
23 If you go back, it is about \$6,000,000.

24 MS. DOUGLAS: What percentage is that of the total
25 payments to farmers?

1 MR. UNDERWOOD: I don't know right offhand. I know
2 that we equated to looking at it on a per acre-foot basis.
3 And it is in the range of about \$5 an acre-foot.

4 MS. DOUGLAS: In the range of about \$5 per acre-feet
5 and the payments per acre-foot is in the range of \$140?

6 MR. UNDERWOOD: Depends on how much water. If you're
7 using maximum water, then obviously it gets cheaper, it gets
8 down to the 153, and if you use minimum water then it is
9 about \$206 an acre-foot.

10 MS. DOUGLAS: Now, are you -- and this is a more
11 general question for any of the witnesses. Are any of you
12 aware of a letter sent from the United Farm Workers of
13 America to this Water Board on May 14th, 2002?

14 MR. LEVY: I am not.

15 MR. UNDERWOOD: I am not either.

16 MS. STAPLETON: No.

17 MS. DOUGLAS: Can I approach the witness?

18 MR. OSIAS: I haven't seen it either.

19 CHAIRMAN BAGGETT: I haven't.

20 MS. DOUGLAS: Let me show the witness, then I will give
21 you a copy.

22 CHAIRMAN BAGGETT: You are going to introduce?

23 MS. DOUGLAS: Yes, if I could mark this as PCL Exhibit
24 36.

25 MS. DIFFERDING: I have asked the Farm Bureau to serve

1 that letter on all the parties consistent with our ex parte
2 rules. It hasn't been delivered to the Chairman for that
3 reason.

4 MS. DOUGLAS: The United Farm Workers Union?

5 MS. DIFFERDING: Yes.

6 CHAIRMAN BAGGETT: Can't receive testimony from
7 outside.

8 MS. DIFFERDING: It is currently in limbo. The Farm --
9 the organization said that they would be serving it on the
10 parties, sending out a letter or copy of a letter to all the
11 parties. Once we get proof of service for our records --

12 CHAIRMAN BAGGETT: Can we look at that?

13 MS. DIFFERDING: This would be quicker.

14 CHAIRMAN BAGGETT: Put it in evidence.

15 MS. DOUGLAS: I got the letter from an E-mail that was
16 sent to all of the parties who accepted E-mail service.

17 CHAIRMAN BAGGETT: I never saw the E-mail. It would
18 have been an ex parte communication, and I wouldn't have
19 opened it anyway. But I did not even see one, not opened or
20 open.

21 MS. DOUGLAS: Should I hold off on this question?

22 CHAIRMAN BAGGETT: Enter it.

23 MR. OSIAS: Who's it addressed to?

24 MS. DOUGLAS: It's addressed to Chairman Baggett.

25 CHAIRMAN BAGGETT: It's addressed to me, I guess.

1 MR. SLATER: I am going to object unless a foundation
2 is first laid for the letter, who it's to, what it regards
3 and whether the witnesses have any opinion about the
4 content.

5 MS. DOUGLAS: They say they haven't seen it.

6 MR. OSIAS: Probably don't have an opinion, although
7 that is not necessarily so.

8 CHAIRMAN BAGGETT: What is your foundation for this?

9 MS. DOUGLAS: What is my foundation for the letter? I
10 think I will skip the letter.

11 CHAIRMAN BAGGETT: Sounds like it is going to get
12 here.

13 MS. DOUGLAS: Would you agree with the statement that
14 in a fallowing -- in a transfer where water is conserved for
15 fallowing, that mitigation or farmworkers who lose their job
16 needs to be a part of the transfer?

17 MR. UNDERWOOD: Yes.

18 MS. DOUGLAS: Did you find in the Palo Verde test case
19 that there were farm workers identified who lost work?

20 MR. UNDERWOOD: If I remember the numbers correctly,
21 the farm laborers themselves, I think it was 25. The farm
22 services or supplies were 27, and I think seven part-times.
23 So you are looking at almost a hundred thousand acre-feet
24 with a loss of about 50 jobs.

25 CHAIRMAN BAGGETT: Would you clarify, was that 15 or

1 50?

2 MR. UNDERWOOD: Fifty.

3 CHAIRMAN BAGGETT: Five zero.

4 MR. UNDERWOOD: Twenty-five plus the 27 plus the seven
5 part time. The others are full time.

6 MS. DOUGLAS: What kind of community development
7 project did you implement?

8 MR. UNDERWOOD: We haven't yet.

9 MS. DOUGLAS: These are proposed?

10 MR. UNDERWOOD: That's correct. Let me clarify. We
11 are doing a social economic analysis, and impact analysis
12 for a couple reasons. One is to define who is being
13 impacted so you can direct the programs that the community
14 will be directing to hit the people who are being affected.
15 The other part is you develop through that social economic
16 assessment you develop a database that you can then measure
17 later on to see who is being impacted and what the extent of
18 the impact.

19 MS. DOUGLAS: Then what kind of -- do you have ideas
20 for what you might do if and when you found an impact? Or
21 is that for after the studies?

22 MR. UNDERWOOD: We have some thoughts now, but I think
23 I would wait until to see the actual impact. Obviously, if
24 you are trying to retrain, the problem is you retrain them
25 for what? It has to be some kind of business that they

1 could potentially be employed within their locality. So
2 sometimes it may be better to attract other businesses that
3 potentially would be comparable jobs that they could have.
4 But there is some consideration giving priority to farmer
5 workers or the people that are directly impacted.

6 MS. DOUGLAS: Is there also consideration for giving
7 unemployment payments or some sort of severance to farm
8 workers who are impacted?

9 MR. UNDERWOOD: That is something that could be
10 considered, yes. I know other people have talked about it.
11 Discussions I have had with others.

12 MS. DOUGLAS: Ms. Stapleton, now that you've had a
13 break, Mr. Osias asked you a number of questions about the
14 cost of putting makeup water in the Sea.

15 Do you remember that?

16 MS. STAPLETON: Yes.

17 MS. DOUGLAS: He suggested that the price being paid
18 for water at Palo Verde, which is around 140, \$150 an
19 acre-foot, the cost of putting a hundred thousand acre-feet
20 of water in the Sea is quite high?

21 MS. STAPLETON: Yes, it is.

22 MS. DOUGLAS: We got to 500,000,000.

23 MS. STAPLETON: Something like that.

24 MS. DOUGLAS: Do you know how much IID pays for water
25 that they get from the Colorado River?

1 MS. STAPLETON: They don't have any charge at all for
2 the water that comes into the Colorado River. I believe
3 that they charge their customers about \$15.50 per acre-foot
4 of water.

5 MS. DOUGLAS: Is that for delivery charges?

6 MS. STAPLETON: I know they have some areas where there
7 are additional pump charges, but in general that is the cost
8 of water to their customers.

9 MS. DOUGLAS: Thank you.

10 I have no further questions.

11 CHAIRMAN BAGGETT: Thank you.

12 Off the record for a couple minutes here.

13 (Break taken.)

14 CHAIRMAN BAGGETT: Back on the record.

15 We are up with National Wildlife, after which we will
16 take a short recess.

17 ---oOo---

18 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

19 BY NATIONAL WILDLIFE FEDERATION

20 BY MR. JOHNSON

21 MR. JOHNSON: Mr. Chairman, Kevin Johnson on behalf of
22 National Wildlife Federation. I don't believe I have any
23 questions for the gentlemen on the panel today. So to the
24 extent that they want to be excused for the course of this,
25 I am going to shoot for a half an hour, but I may go over a

1 little bit.

2 You look good sitting there, sir.

3 CHAIRMAN BAGGETT: You are welcome to sit or you're
4 welcome to leave.

5 So Ms. Stapleton is up.

6 MR. JOHNSON: Thank you. Good afternoon, it is a
7 pleasure being here again at the end of a long day, only to
8 be exceeded by being here at 5:00, should that occur. I am
9 going to try to go through this as quickly as I can.

10 I want to ask a few foundational questions about the
11 declaration that you submitted on the subject of growth
12 inducement.

13 MS. STAPLETON: Sure.

14 MR. JOHNSON: In terms of that preparation process, did
15 you have an opportunity to preview and consider the exhibits
16 that were submitted by NWF as part of their record in the
17 direct portion of the evidence in this hearing, proceeding?

18 MS. STAPLETON: I don't recall specifically what the
19 exhibits were for NWF, so I can't say I know your exhibits I
20 reviewed.

21 MR. JOHNSON: Let me ask you a few specific
22 questions.

23 Did you see the declaration of Craig Jones?

24 MS. STAPLETON: Yes.

25 MR. JOHNSON: Read that?

1 MS. STAPLETON: Yes.

2 MR. JOHNSON: Also Ms. Michel's, did you review that?

3 MS. STAPLETON: Yes.

4 MR. JOHNSON: Did you see the letter, and this didn't
5 go into evidence, but the letter that was submitted by my
6 offices on the subject of growth inducements?

7 MS. STAPLETON: No.

8 MR. JOHNSON: Now we had also submitted in terms of
9 exhibits the San Diego Regional Economic Prosperity Strategy
10 Report prepared by SANDAG.

11 Did you happen to see that? Are you familiar with
12 that?

13 MS. STAPLETON: I am familiar with it from other areas
14 of work that I have done.

15 MR. JOHNSON: You are also familiar, I assume in great
16 detail, with the Urban Water Management Plan that's put
17 forward by the Water Authority?

18 MS. STAPLETON: Yes.

19 MR. JOHNSON: As part of your job you also sort of
20 track on a regular basis what is going on with conservation
21 efforts in the county?

22 MS. STAPLETON: Yes.

23 MR. JOHNSON: Authority jurisdiction boundaries?

24 MS. STAPLETON: We have a very active conservation
25 program.

1 MR. JOHNSON: Does that involve networking with cities
2 and county representatives and things like that to see what
3 they are doing?

4 MS. STAPLETON: Yes, we keep track of our member
5 agencies and what they are doing related to conservation as
6 well.

7 MR. JOHNSON: With respect to your relationship with
8 SANDAG, you've indicated that you basically come up with, if
9 I may characterize it this way, you basically come up with a
10 lot of what they say they need; is that a fair summary of
11 what is going on?

12 MS. STAPLETON: Both the supply and the facilities to
13 meet the needs as projected by SANDAG.

14 MR. JOHNSON: SANDAG now, however, I think has been
15 pretty clear in terms of its testimony before this Board and
16 its submissions that they assume for purposes of their
17 projections that they will have enough water to support
18 whatever growth is projected; is that correct?

19 MS. STAPLETON: Yes.

20 MR. JOHNSON: So SANDAG never looks at whether the
21 water will actually be available and it doesn't look at what
22 would happen if the water wasn't available; is that a fair
23 statement?

24 MS. STAPLETON: I do not know specifically if
25 internally SANDAG looks at whether or not a specific

1 commodity or infrastructure is available or not. I do not
2 know that internal working.

3 MR. JOHNSON: In terms of your workings and your
4 planning, have you ever studied what would happen to the
5 county if the water was not available?

6 MS. STAPLETON: Yes. We did it during the drought,
7 what the economic impacts were as a result of the cutbacks.

8 MR. JOHNSON: Based on what I have heard from you
9 before and today, pretty dire economic consequences; is that
10 right?

11 MS. STAPLETON: Yes. If we have water shortages, it
12 has significant economic and quality of life consequences.

13 MR. JOHNSON: I think you said earlier it was
14 reliability of the water supply was critical to sustained
15 economic development in the county?

16 MS. STAPLETON: Yes.

17 MR. JOHNSON: I want to move on now and talk a little
18 bit about some of the things you have said publicly and in
19 writing regarding the nature of this project and what all is
20 involved. And most immediately I want to talk about this
21 concept of this being a new water supply because I have seen
22 that in several different places.

23 And are you comfortable, by the way, with calling this
24 a new water supply?

25 MS. STAPLETON: It would be a new supply for San Diego

1 County Water Authority. We have never had a supply other
2 than from Metropolitan.

3 MR. JOHNSON: With respect to what happens with what
4 you're getting from Metropolitan, as I understand it, you
5 are talking about basically saying, "All right, we've been
6 getting X amount of water from you over a period of time and
7 we are going to reduce what we are getting from you by
8 200,000 acre-feet"?

9 MS. STAPLETON: Correct.

10 MR. JOHNSON: That will take the number down to about
11 what in terms of current consumption?

12 MS. STAPLETON: It would take it down to about 400,000
13 acre-feet of water.

14 MR. JOHNSON: Is there in any of your agreements that
15 you have out there, a provision that would prevent you from
16 after this project, this transfer project goes through,
17 going back to Metropolitan and saying, "You know what, we
18 would like some more water above that 400,000 acre-feet"?

19 MS. STAPLETON: We would have physical constraints that
20 would prevent that.

21 MR. JOHNSON: We'll get to that in a minute. Thank you
22 for anticipating my questions. But right now I want to
23 focus on whether there is any specific contractual agreement
24 or law or policy or regulation that would preclude you from
25 asking them for more water?

1 MS. STAPLETON: There is no preclusion for asking for
2 additional water, not that I am aware of.

3 MR. JOHNSON: I would like to explore, then, a few
4 circumstances under which you might go to them and say, "We
5 would like more water."

6 I assume if we went into another prolonged drought
7 period and local water supplies were not what you needed,
8 you would feel free to go to them and say, "We would like to
9 get some water if it's available," correct?

10 MS. STAPLETON: Yes.

11 MR. JOHNSON: At the same time let's say we are not in
12 a drought and the economy is booming beyond projections that
13 you've seen, and you are going to need more water to take
14 care of that additional nonforecasted economic growth.

15 You would go to MWD and say, "We would like to have
16 more water to cover this economic growth"; is that correct?

17 MS. STAPLETON: We could go to MWD or other sources
18 that were available to us.

19 MR. JOHNSON: And by way of another example, you
20 projected certain savings over a period of 20 years
21 regarding the success of your conservation efforts. And if
22 your conservation efforts don't quite meet the goals or
23 fall significantly short, then you may need to go to MWD --
24 excuse me, easy for you to say -- you may need to go to the
25 entity and ask them for more water, correct?

1 MS. STAPLETON: Yes, we could.

2 MR. JOHNSON: In terms of your long-range planning, is
3 there anything in your charter or your policies or your
4 urban management plan which would discourage you or prevent
5 you from going to MWD and making those requests?

6 MS. STAPLETON: There would be a -- there is a
7 discouragement provision in our relationship with MWD
8 related to asking for more water, or relying on more water.

9 MR. JOHNSON: What is that provision?

10 MS. STAPLETON: That would be the preferential rights
11 provision, Section 135.

12 MR. JOHNSON: You're currently litigating over that
13 provision; is that right?

14 MS. STAPLETON: Correct.

15 MR. JOHNSON: And you would like more water from MWD,
16 right?

17 MS. STAPLETON: No. We would like a recognition of our
18 financial investment into Metropolitan be counted for our
19 preferential rights.

20 MR. JOHNSON: The lawsuit was dismissed, and it is on
21 appeal; is that correct?

22 MS. STAPLETON: It is on appeal.

23 MR. JOHNSON: Is not an element of that lawsuit those
24 seeking to have more water from them above and beyond the 15
25 percent limit?

1 MS. STAPLETON: No, it is not asking for more water.
2 It is -- our argument is that our preferential rights for
3 water that we presently use and have used for many years
4 should be firmed up in the Metropolitan structure.

5 MR. JOHNSON: We'll come back to that in just a
6 minute.

7 We have established that there may be some
8 circumstances where you would ask for more water from MWD.
9 And let's talk a little bit about capacity. I heard and
10 taken note of what you said in your declaration and your
11 testimony here today on that issue. Let me ask you a
12 general question.

13 It seems to me related to this statement we made
14 earlier that we agreed on that you're sort of in the
15 business of getting the water to the people who need it,
16 that the whole issue of capacity is somewhat irrelevant
17 because your job is to always make sure that the capacity is
18 there when the water is needed?

19 MS. STAPLETON: It is my job as the Water Authority to
20 reject demands and to secure supplies and facilities to meet
21 those demands both on planning, sizing and phasing.

22 MR. JOHNSON: If a certain amount of water is needed
23 ten years from now, you already got it sort of in your long
24 range plan as to how you are going to be able to deliver
25 that water; is that correct?

1 MS. STAPLETON: Correct. It is our job to determine
2 that plan and execute it as appropriate.

3 MR. JOHNSON: I was looking at Page 4 of your
4 declaration. It was submitted as part of the rebuttal
5 testimony, and there is a discussion there in the middle,
6 starting Line 13, regarding the capacity of your treated
7 water lines. And it says that currently there is capacity
8 to allow operations to supply whatever is needed for a
9 period of six to 15 years.

10 Do you see that?

11 MS. STAPLETON: Yes.

12 MR. JOHNSON: What is the percentage of the capacity of
13 the use of those lines right now based on those numbers that
14 you put forward?

15 MS. STAPLETON: On our treatment side we are in the 90
16 to 95 percent range. And in our raw water lines we are
17 probably in the 80 to 85 percent range. So we cannot take
18 additional significant amounts of water beyond those.

19 MR. JOHNSON: How do you then project out that you have
20 enough capacity for six to 15 years?

21 MS. STAPLETON: Because the water that we plan on
22 acquiring for additional growth, we hope that the largest
23 chunk of that water be in local supply, development,
24 conservation, reclamation and desalination. And that does
25 not require transportation from outside of the county.

1 MR. JOHNSON: You say here that the lines are presently
2 operating at a level that we planned needs for the next six
3 to 15 years.

4 MS. STAPLETON: Correct.

5 MR. JOHNSON: So really what you're talking about is we
6 got the lines, but we have all those other things we are
7 going to make sure we have enough water supply?

8 MS. STAPLETON: When I refer to this I really meant in
9 the totality if the Water Authority's plans.

10 MR. JOHNSON: Then you say a little later on that the
11 water transfer has no impact on the need or timing of these
12 facilities; is that correct?

13 MS. STAPLETON: Correct.

14 MR. JOHNSON: Once again we are back to the notion that
15 you're in the process of building facilities that you need
16 for the water?

17 MS. STAPLETON: Correct.

18 MR. JOHNSON: So if the water is available from MWD and
19 there is water that is needed in San Diego, you're going to
20 have facilities in place to deliver the water?

21 MS. STAPLETON: If that is the source of the supply,
22 yes.

23 MR. JOHNSON: Now on the subject of reliable water,
24 this is something that has been stressed over and over
25 again. I have seen it in many press releases and newsletter

1 updates, and everybody keeps talking about reliable water
2 everywhere when they talk about this project down in San
3 Diego, right?

4 MS. STAPLETON: Right.

5 MR. JOHNSON: And the business community, by and large,
6 is kind of excited about the idea of having reliable water
7 also because they need it to be able to plan their growth
8 and their location decisions and things of that nature?

9 MS. STAPLETON: I don't think that they equate the IID,
10 specifically the IID transfer, to reliable water for new
11 growth and so forth. I think what they are excited about
12 is, as you call it, is firming up our water supply that we
13 presently utilize.

14 MR. JOHNSON: Because they are concerned that if a
15 water supply is not there, they are not going to be able to
16 continue to expand their businesses or --

17 MS. STAPLETON: They will not be able to continue to
18 operate in the fashion they are presently.

19 MR. JOHNSON: Now I want to focus a little bit on sort
20 of business decisions as it relates to the water supply
21 being reliable. In San Diego County we have, as I
22 understand it, this is Mr. Jones' declaration which I know
23 you have seen, that we have the third highest concentration
24 of biotech industries in San Diego County compared to the
25 rest of the country; is that correct?

1 MS. STAPLETON: Correct.

2 MR. JOHNSON: Is it fair to say those biotech
3 industries are very water intensive in terms of what they do
4 in their operations?

5 MS. STAPLETON: Not necessarily. It depends on where
6 they are at and if they are just starting or if they moved
7 into manufacturing, and then also it depends on the actual
8 product that they are producing. I will tell you that they
9 are very intensive in water quality and reliability of
10 supply.

11 MR. JOHNSON: And with respect to, for example, other
12 industries in San Diego, tourism and all that, that is the
13 third base industry, I think, down in San Diego County; is
14 that right?

15 MS. STAPLETON: Yes.

16 MR. JOHNSON: Your urban management plans talks about
17 how water intensive that industry is?

18 MS. STAPLETON: Absolutely.

19 MR. JOHNSON: In order for that industry to grow and
20 expand, they have to make sure that they've got reliable
21 water, too?

22 MS. STAPLETON: Right.

23 MR. JOHNSON: When these industries -- in fact, I
24 wanted to ask you, have you had occasion to see what is
25 going on in terms of Chamber of Commerce activities in

1 trying to recruit new businesses to come to San Diego?

2 MS. STAPLETON: Yes, I am familiar with their
3 activities of the Economic Development Corporation.

4 MR. JOHNSON: Part of what they do is they are out
5 there trying to bring people in, new business, new jobs, and
6 one of the questions that comes up is do you have a reliable
7 water supply?

8 MS. STAPLETON: Right. Do you have a supply for future
9 growth?

10 MR. JOHNSON: Or alternatively, do you have a reliable
11 water supply.

12 So basically this all comes back to your statement
13 earlier on today that basically that this reliability is
14 critical to sustain the economic development in the County
15 of San Diego?

16 MS. STAPLETON: I think that there is two pieces here,
17 reliability, water reliability is critical to maintain the
18 economy and the quality of life we have now. Seeking
19 additional supplies that are reliable is important for
20 business expansion, attraction and economic development.

21 MR. JOHNSON: This all equates to keeping jobs that are
22 there and getting new jobs into the region?

23 MS. STAPLETON: Correct. It's, you know, job
24 attraction, investment in the region.

25 MR. JOHNSON: And based on your experience in dealing

1 with the various groups and entities that are interested in
2 bringing in more business and more jobs, I assume you have
3 seen some of the studies that have come out that indicated
4 that new jobs are one of the single biggest reasons why we
5 bring more people into San Diego County?

6 MS. STAPLETON: I am not sure I understand that.

7 MR. JOHNSON: Well, new jobs bring in more people,
8 right, into the county?

9 MS. STAPLETON: Yes. I would presume that new jobs
10 bring more people into the county. And then also the bulk
11 of our population growth is births over deaths.

12 MR. JOHNSON: That is an assumption that is put forward
13 by SANDAG, but not everybody agrees with that, correct?

14 MS. STAPLETON: I have not heard disagreement related
15 to that.

16 MR. JOHNSON: Let me ask you this: That assumption
17 assumes every child is born in San Diego County stays and
18 doesn't leave San Diego County. Are you familiar with that
19 assumption?

20 MS. STAPLETON: No, I am not.

21 MR. JOHNSON: That's in the report if you see that,
22 I will indicate that to you.

23 In any event, let us agree that one of the significant
24 factors that brings new people into the county of San Diego
25 is new jobs?

1 MS. STAPLETON: Correct.

2 MR. JOHNSON: So you're in the business of getting
3 water where it needs to be to bring in new jobs. People
4 typically, would you agree, would move to San Diego after
5 they've got a job, they don't come to San Diego, buy an
6 expensive home and then go looking for a job?

7 MS. STAPLETON: I believe we have both in our
8 county. I think it has something to do with our weather.

9 MR. JOHNSON: So let's talk about the new people that
10 come as result of water being delivered for these new
11 businesses and these new jobs.

12 They've got to build homes for these people. And in
13 some places they are building higher density homes and in
14 other places they are building out into the open space
15 areas. Fair statement?

16 MS. STAPLETON: Not open space areas, the planned
17 urbanized areas. Open space in San Diego County takes on a
18 unique land use indication which is open space is dedicated
19 open space which does not have development on it. Actually,
20 where they are building is in the planned urbanizing area
21 and will build in the future urbanizing area. We have a
22 fairly sophisticated, I believe, land management or growth
23 management plan, which really identifies the area in the
24 county where the future building will be and where it will
25 not be.

1 MR. JOHNSON: Let me be clear on this. Future
2 urbanizing area, that is a term that is used primarily in
3 connection with the City of San Diego; is that not correct?

4 MS. STAPLETON: Yes, they are one of the -- they are
5 one of the cities that will have the largest additional
6 population.

7 MR. JOHNSON: And there are 19 cities, though, or 18
8 cities and the county. And the 18 plus the one make up the
9 SANDAG organization that you have been talking about?

10 MS. STAPLETON: Correct.

11 MR. JOHNSON: Are there future urbanizing areas for the
12 other 18 cities?

13 MS. STAPLETON: I know that in the other cities that
14 there are general plans which identify the growth areas and
15 identify those areas which they desire to have as either
16 permanent open space or have as commercial, industrial, what
17 have you. It's the typical general plan that you see in
18 many cities throughout California.

19 MR. JOHNSON: Is it your testimony that the cities
20 follow these general plans?

21 MS. STAPLETON: Generally, they do. But as everyone
22 knows that there are deviations from the general plan from
23 time to time based upon that individual local government's
24 decision on land use.

25 MR. JOHNSON: The City of San Diego, for example, is a

1 charter city, right?

2 MS. STAPLETON: Correct.

3 MR. JOHNSON: Do you know what that means in terms of
4 the general plan?

5 MS. STAPLETON: Yes, I do.

6 MR. JOHNSON: It means they don't have to follow the
7 general plan, correct?

8 MS. STAPLETON: Correct.

9 MR. JOHNSON: Would you agree that the City of San
10 Diego has a long history of not following its general plan?

11 MR. SLATER: Objection. Argumentative.

12 CHAIRMAN BAGGETT: Restate. Sustained.

13 MR. JOHNSON: Does the City of San Diego have a solid
14 track record of consistently following its general plan when
15 it comes to significant development within its jurisdiction?

16 MS. STAPLETON: I believe that the City of San Diego
17 does a good job related to its general plan, taking into
18 consideration all of the elements that local land use
19 agencies have to. Yes, I think they do a good job.

20 MR. JOHNSON: Let me bounce back to this statement you
21 made about open space with respect to what is going on in
22 the county.

23 You know whether they are building, for example, in
24 areas that are not considered open space and the City of
25 Encinitas that have significant habitat valley at the same

1 time?

2 MS. STAPLETON: I don't know about specific development
3 in Encinitas. I am not aware of that.

4 MR. JOHNSON: How about in the City of Carlsbad?

5 MS. STAPLETON: I am not aware of a specific
6 development related to critical habitat.

7 MR. JOHNSON: But there could be as far as you know?

8 MS. STAPLETON: Yes, there could be.

9 MR. JOHNSON: Down in the east county we have the City
10 of Escondido. Are they building in critical habitat over
11 there?

12 MS. STAPLETON: They could be.

13 MR. JOHNSON: And over in Santee, down south in the
14 eastern segment, are they building in critical habitat
15 there?

16 MS. STAPLETON: I don't know but --

17 MR. JOHNSON: In El Cajon, are they doing that next to
18 Santee?

19 MS. STAPLETON: I do not know.

20 MR. JOHNSON: Chula Vista, are they building in
21 critical habitat in Chula Vista?

22 MS. STAPLETON: I do not know.

23 MR. JOHNSON: Now your water is going to give us all
24 these jobs, and we are going to bet a million more people in
25 the county of San Diego we are told by SANDAG over the next

1 20 years. And do you know how much land is going to be
2 chewed up, built upon and used and permanently taken out of
3 circulation in order to accommodate a million more people in
4 the county of San Diego?

5 MS. STAPLETON: No, I do not.

6 MR. JOHNSON: Does SANDAG know how much land is going
7 to be used up to accommodate a million more people?

8 MS. STAPLETON: I do not know.

9 MR. JOHNSON: Let's just assume, for example, that --
10 and by the way, you saw in Ms. Michel's paper her discussion
11 about the projected increase in San Diego County of the
12 amount of single family homes to be built in the next 20
13 years versus the amount of high density homes, multifamily
14 homes to be built; is that correct, you saw that?

15 MS. STAPLETON: I do remember reading about that.

16 MR. JOHNSON: She said that we are going to have a 201
17 percent increase in the number of single family homes in
18 San Diego County versus a roughly 43 percent increase in the
19 amount of multifamily homes in San Diego County the next 20
20 years, correct?

21 MS. STAPLETON: I don't know the specific numbers, but
22 that sounds about right to what I recall.

23 MR. JOHNSON: Based on your experience and your job and
24 being involved in these various growth groups and things
25 like that, that would sound to be about right?

1 MS. STAPLETON: Yes, it would.

2 MR. JOHNSON: Isn't it, in fact, true that SANDAG has
3 been going to these 18 cities and saying, "We would really
4 like you guys to start densifying in your cities and
5 increase the number of units that could be built on your
6 general plans." And the cities are saying no?

7 MR. SLATER: Objection. Calls for speculation.

8 MR. OSIAS: Objection. Relevance.

9 CHAIRMAN BAGGETT: Answer either. I would sustain both
10 unless you can convince me otherwise.

11 MR. JOHNSON: Where I'm going here is that the cities
12 are refusing to -- offer of proof here, your Honor.

13 The cities are refusing to densify according to SANDAG
14 model. So that means that the growth in terms of where the
15 houses are being built --

16 CHAIRMAN BAGGETT: How is that relevant to --

17 MR. SLATER: One, it is not relevant. Two, this
18 witness -- there has been no foundation that this witness
19 has any personal knowledge of that. And three, this subject
20 was not part of the rebuttal. We've been patient up to --

21 CHAIRMAN BAGGETT: You can respond to all three.

22 MR. JOHNSON: Where we are going here is that we are
23 focusing now on how much habitat and land --

24 CHAIRMAN BAGGETT: But this was not -- can you tell me
25 where it is in her rebuttal testimony?

1 MR. JOHNSON: Absolutely. There are a number of
2 statements in her declaration which addressed the issue of
3 growth inducement, and she starts off by saying --

4 CHAIRMAN BAGGETT: These questions aren't about growth
5 inducement; they are about density?

6 MR. JOHNSON: If I may, counsel, they are part of the
7 chain of causation that we are laying out here. In other
8 words, she said there is not going to be any growth
9 inducement. She also says the reliable water supply is
10 going to be good for the environment. She goes ahead, for
11 example, and we are going to get to this --

12 CHAIRMAN BAGGETT: Continue.

13 MR. JOHNSON: She also says in her declaration that as
14 part of the argument that it is going to be good for the
15 environment, she says that, you know, what if we don't have
16 enough water it is going to decrease the amount of runoff
17 that we are going to have and that could affect the fish
18 that are supposedly in the streams that are benefiting from
19 that water. So she directly links what is going between her
20 project and what the impacts are going to be on fish
21 wildlife.

22 CHAIRMAN BAGGETT: In San Diego?

23 MR. JOHNSON: In San Diego County, and that is why it
24 is relevant. It is all there.

25 MR. SLATER: As it relates to increased runoff, she has

1 not offered any testimony about density. In fact, her
2 testimony was that the San Diego County Water Authority has
3 absolutely no zoning power, general plan authority, issues
4 no building permits or has anything to do with --

5 CHAIRMAN BAGGETT: I understand that.

6 MR. JOHNSON: And we agree with that.

7 CHAIRMAN BAGGETT: If you agree with that, then how is
8 this the proper witness to ask those questions? The
9 planning director who was up here earlier and the part I
10 don't believe you were present, when we had the planning
11 director from San Diego County probably would have been the
12 appropriate person to ask those questions.

13 MR. SLATER: Let me also --

14 CHAIRMAN BAGGETT: These are land use issues which --

15 MR. SLATER: Furthermore, this was rebuttal testimony.
16 There were witnesses brought in who suggested that making
17 water more reliable had impacts or impacts on fish and life
18 in the streams. And, in fact, Ms. Stapleton's testimony is
19 that that runoff is actually a beneficial use.

20 CHAIRMAN BAGGETT: I understand. You made that
21 argument.

22 Do you have any other?

23 MR. JOHNSON: Sure. What she has testified to here is
24 that there is not going to be growth inducing impacts. But
25 what we are tracing is the causation change which says that

1 when there is a reliable water -- when there is reliable
2 supply --

3 CHAIRMAN BAGGETT: I understand.

4 MR. JOHNSON: Of both private business, and we have
5 established that, and we are exploring the issue of what
6 happens with the local government. Because her declaration
7 goes on substantially talking about what effectively a great
8 planning body SANDAG is and how it is planning for all these
9 things and how there is going to be no habitat. She said
10 that no habitat is going to be chewed up, if you will, as a
11 result of this. And we are simply going through and
12 explaining why that is simply not the case.

13 After I'm done with this issue of, and I am almost done
14 with it, with respect to the issue of the municipalities and
15 what is going on with the land use, then we are going to get
16 into more specifics, and this will be very brief, regarding
17 what's happening with the water, what is happening with
18 groundwater discharge, what is happening with wastewater
19 discharge and all those things that have very specific
20 impacts on the fish and wildlife.

21 CHAIRMAN BAGGETT: Final comment.

22 MR. SLATER: Objection continuing. There is no
23 testimony -- there is -- her rebuttal testimony regarding
24 SANDAG was, one, that there was indeed a memo, memorandum
25 agreement and that San Diego was carrying out its

1 responsibilities under that agreement. That is what the
2 testimony, rebuttal testimony, as it relates to SANDAG was
3 about.

4 Our case in chief in which we had other witnesses here
5 was responsive to this issue, but not our rebuttal
6 testimony.

7 MR. JOHNSON: This scope of the declaration. I'm
8 relying specifically on what is in this declaration in terms
9 of the cross-examination. They chose to lay out and address
10 these issues. She didn't have to put in the statement that
11 there is no growth inducement. She didn't have to address
12 the issue of the water levels affecting fish in the stream.

13 CHAIRMAN BAGGETT: I will overrule the objection. I
14 would just advise that you -- one, the witness answer just
15 to her knowledge. She is obviously not a planning director.
16 She might not have knowledge of some of these specifics.

17 So you can answer given your position and your role.

18 And if you could quickly get to where you want to get
19 to that would be appreciated.

20 MR. JOHNSON: Thank you. Appreciate that, Mr.
21 Chairman.

22 Let's roll on down this list I have here regarding the
23 impacts of the million people coming into the community. We
24 have established that we don't know how much land is going
25 to be needed to accommodate these people. We talked about

1 what have been efforts by SANDAG to convince municipalities
2 to perhaps densify with respect to their boundaries. We
3 have talked a little bit about how that is not being
4 particularly successful. Just to sort of --

5 MR. SLATER: Misstates the testimony. Objection. The
6 witness did not testify to that. That was the question.

7 MR. JOHNSON: I said we talked about it; that wasn't
8 quoting her testimony.

9 MR. SLATER: If he wants to reference his own earlier
10 questions, fine, but this witness has not testified to that
11 subject.

12 CHAIRMAN BAGGETT: Strike the comments. I don't recall
13 him using the word "testify."

14 Continue.

15 MR. JOHNSON: Moving it along in the subject matter
16 here. In fact, isn't it true that the efforts to have
17 regional planning, including conservation and all of that,
18 have been so unsuccessful that they've had to go to the
19 Legislature up here in Sacramento and ask for regional
20 planning bills with teeth that could be used to get the
21 entities to get together, 18 entities down there, to get
22 together in terms of their land use planning and their
23 transportation planning and their water planning?

24 MR. SLATER: Objection. Calls for speculation.

25 MR. JOHNSON: I am asking if she knows about it.

1 CHAIRMAN BAGGETT: Overruled.

2 MS. STAPLETON: I am aware of the regional governance
3 effort, but I do not believe that your question articulates
4 why it -- correctly articulates why it was happening.

5 MR. JOHNSON: In addition to the growth causing land to
6 be used up, we have the issue of increased runoff as a
7 result of impervious surfaces being increased in quantity
8 and lengths and location.

9 And has the water authority or anyone to your knowledge
10 studied what this growth will be in terms of increasing
11 runoff from land that heretofore were able to absorb and
12 filter the water that was hitting the surface?

13 MS. STAPLETON: The water authority has not done that
14 study.

15 MR. JOHNSON: Has SANDAG, to your knowledge, done that
16 study?

17 MS. STAPLETON: I am not aware of it.

18 MR. JOHNSON: Has anybody attempted to quantify the
19 amount of pollutants that would be increased in the water
20 systems off the coast in San Diego County as a result of
21 that growth?

22 MS. STAPLETON: I don't know.

23 MR. JOHNSON: Did you see Ms. Michel's discussion of
24 that in her paper regarding experiences of increased
25 pollutants as a result of urban growth?

1 MS. STAPLETON: I recall the subject matter in hers.

2 MR. JOHNSON: Was there anything that you disagreed
3 with in terms of her general causal relationship between the
4 growth and the increased pollutants?

5 MS. STAPLETON: I do not now recall the details of it
6 sufficiently to give you an answer on whether I agree or
7 disagree.

8 MR. JOHNSON: In terms of the impervious surfaces, they
9 also effect groundwater recharge; is that correct?

10 MS. STAPLETON: If there is an aquifer under that
11 specific area, correct.

12 MR. JOHNSON: Have you or SANDAG done any studies to
13 see whether these future growth patterns could potentially
14 affect groundwater recharge for aquifers that you are
15 relying on or might rely on in the future for water supplies?

16 MS. STAPLETON: To my knowledge, we have not done any
17 studies, and I am not aware of what SANDAG has or has not
18 done.

19 MR. JOHNSON: On another subject in terms of wastewater
20 discharge, you probably saw in Ms. Michel's paper the
21 discussion of the 90 percent increase in wastewater
22 discharge off Point Loma down in San Diego over the last
23 several years; is that correct?

24 MS. STAPLETON: Yes.

25 MR. JOHNSON: She commented that studies have shown

1 that in Tijuana, for example, when they have an increase in
2 water supplies, they get an exponential increase in the
3 amount of wastewater that occurs, that ends up in the river
4 and in the ocean; is that correct?

5 MS. STAPLETON: Yes.

6 MR. JOHNSON: Has anybody in the Water Authority or
7 SANDAG studied the impact of this water and the growth on
8 the amount of wastewater that will be coming out and into
9 the water systems and into the ocean in San Diego?

10 MS. STAPLETON: I do not know what SANDAG has done.
11 The San Diego County Water Authority has been involved on
12 reclamation issues which obviously have an impact on the how
13 much outfall there is into the ocean ultimately.

14 MR. JOHNSON: On the subject of contamination of
15 groundwater, are you familiar with the Riverview Water
16 District experience in recent years where they had to shut
17 down several wells as a result of MTBE contamination?

18 MS. STAPLETON: I am aware of that.

19 MR. JOHNSON: Has anybody done any studies in terms of
20 this million people and the businesses and the growth that
21 is going to occur in terms of what they are going to do in
22 affecting potentially underground water supplies and
23 contamination, say, for example through MTBEs?

24 MS. STAPLETON: No. I am not aware of -- the Water
25 Authority has not conducted a study, to my knowledge,

1 regarding that.

2 MR. JOHNSON: So at this point, and I am going to wrap
3 up here shortly, Mr. Chairman.

4 At this point I would like to step back a little bit
5 and summarize or actually ask you to help me with
6 summarizing a couple of points here.

7 It has been established through testimony today and
8 other times that we're talking about unprecedented water
9 transfer in terms of the size and the scope; is that
10 correct?

11 MS. STAPLETON: Correct.

12 MR. JOHNSON: We're looking at a water transfer which,
13 in your own words, is going to create a reliable source of
14 water that's basically going to be there to meet the needs
15 of a million more people for San Diego County?

16 MS. STAPLETON: No, that is not correct. As I said, it
17 is a more reliable supply than we presently have, and it
18 will substitute supplies we are presently receiving from MWD.

19 MR. JOHNSON: But you indicated that you're free to go
20 and ask for more water from MWD if certain circumstances
21 arise that would make that useful, correct?

22 MS. STAPLETON: The Water Authority has the ability to
23 seek additional supplies as necessary to meet the needs of
24 the region?

25 MR. JOHNSON: And that is its job, to meet the needs of

1 the region?

2 MS. STAPLETON: Correct.

3 MR. JOHNSON: So, given the unprecedented transfer,
4 given the million more people that are coming to the area
5 and all the related growth associated with it and given all
6 the different impacts that we have just discussed in
7 principle, in order to have a win-win situation here for San
8 Diego County as well as Imperial County should we take time
9 to actually figure out what these impacts are going to be
10 and design a mitigation program so that, in fact, San Diego
11 County, not just the economy, but the environment is part of
12 that win-win equation?

13 MS. STAPLETON: I believe when San Diego County Water
14 Authority increases its capacity through facilities or it
15 seeks additional supplies to address the growth, that we
16 would go through the appropriate environmental review
17 process and would look at that as part and parcel of the
18 total picture.

19 MR. JOHNSON: Right here today we are concerned whether
20 there is going to be unreasonable impacts to fish and --
21 reasonable harm to fish and wildlife, and what you basically
22 told me is we don't know whether there is going to -- at
23 least you don't know whether there is going to be
24 unreasonable harm to fish and wildlife because nobody knows
25 how much land is going to be chewed up, what the wastewater

1 increase is going to be, what the contaminants are going to
2 be in surface water ocean water aquifers.

3 MS. STAPLETON: I disagree with your statement, or your
4 question, in that these are existing supplies and that there
5 are no chew up, as you put, of habitat or parcels or land
6 area to meet existing supply needs.

7 MR. JOHNSON: The future -- and we will be done here.
8 I don't want to belabor this. We are talking about a
9 million more people, and you are going to make sure you got
10 water for a million more people, correct?

11 MS. STAPLETON: No. You are talking about a million
12 more people. I am talking about a replacement supply for a
13 loss of Colorado River water that this state will experience
14 due to the 4.4 entitlement limitation.

15 MR. JOHNSON: But ultimately this is not a replacement
16 because the whole difference is that this is a reliable
17 water source which is critical to the future economic growth
18 of the City of San Diego, and you do not have a reliable
19 water source right now, correct?

20 MS. STAPLETON: No.

21 MR. JOHNSON: But you are going to get one?

22 MS. STAPLETON: No. That is not correct. We have a
23 reliable water source which Metropolitan just issued in the
24 last three months, their statement that they will be a
25 hundred percent reliable a hundred percent of the time for

1 the next ten years, and that they will be able to meet the
2 supply needs of its member agencies today and in the future
3 for that period of time.

4 The difficulty is that the Colorado River Aqueduct, if
5 we do not do this water transfer and the other projects and
6 programs, the existing Colorado River Aqueduct, which is now
7 full, will be less than full. So we will lose water. You
8 cannot plan growth on an existing supply. The IID water
9 transfer will be an existing supply to continue to meet the
10 needs of the community in San Diego. It is not for
11 additional growth, additional water needs.

12 MR. JOHNSON: Let me be clear on this and I will step
13 down as soon as I am.

14 The deal, the water transfer from the Imperial Valley,
15 has been stated over and over again in all your paperwork
16 and all your press releases and reports it is a reliable
17 source of water because you don't have a reliable source of
18 water?

19 MS. STAPLETON: It is more reliable than the
20 Metropolitan water presently because of their priority
21 status on the Colorado River. They are a priority three and
22 Metropolitan is a priority four.

23 MR. JOHNSON: Metropolitan has, and I am not familiar
24 with the statement from three months ago, you will excuse
25 me, but Metropolitan is talking about, I assume, water being

1 reliable less this 200,000 acre-feet that they are
2 anticipating when this deal goes through, they won't have to
3 provide you any more. So they are going to give you 400,000
4 acre-feet of reliable water?

5 MS. STAPLETON: Correct.

6 MR. JOHNSON: Then on top of that you are going to get
7 200,000 acre-feet of reliable water from IID?

8 MS. STAPLETON: Right, and that makes up our 600,000
9 acre-feet of water that we presently utilize to meet our
10 regions's need.

11 MR. JOHNSON: That is what -- that reliability, excuse
12 me, that reliability is what the business leaders and the
13 decision makers down in San Diego County really are looking
14 to see for purposes of future growth in San Diego County?

15 MS. STAPLETON: I don't agree with you. You do not
16 look at the reliability of your existing supply. You look
17 at the availability and the reliability of your new supply
18 if you are considering business growth in San Diego
19 County.

20 I assure you that every business in the region counts
21 on that water coming out of their tap day in, day out. They
22 are not looking at is today's supply reliable. When they
23 talk about business attraction or expansion, they are
24 looking at the where is the new supply coming from. And
25 that is what I talked about before, desalination, additional

1 local supplies, maximizing our conservation, reclamation
2 efforts and so forth.

3 MR. JOHNSON: So local business leaders will not care
4 one way or another whether this transfer is approved from
5 Imperial; is that correct?

6 MS. STAPLETON: No, that is not correct.

7 MR. JOHNSON: Thanks, your Honor.

8 CHAIRMAN BAGGETT: Thank you.

9 Let's take five minutes and come back with Defenders.
10 Then let's do the Farm Bureau, Mr. Du Bois and Mr. Gilbert
11 and we will see what time is left and then we will make a
12 decision. I think Mr. Rossmann is going to take more than
13 five minutes.

14 Recess for five.

15 (Break taken.)

16 CHAIRMAN BAGGETT: Back with Defenders of Wildlife.

17 See where we are at here.

18 MR. FLETCHER: Are we on the record?

19 CHAIRMAN BAGGETT: We are back on the record.

20 ---oOo---

21 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

22 BY DEFENDERS OF WILDLIFE

23 BY MR. FLETCHER

24 MR. FLETCHER: I can go.

25 Good afternoon.

1 CHAIRMAN BAGGETT: It is still afternoon.

2 MR. FLETCHER: For another hour.

3 I am Brendan Fletcher with Defenders of Wildlife. I
4 have maybe just one question, but at least one topic area,
5 and it is for Mr. Underwood.

6 In response to a question from Mr. Osias, Mr. Levy
7 testified earlier that one potential category of direct cost
8 for farmers participating in the following program could be
9 some adverse tax consequences under the Williamson Act.

10 Do you recall that?

11 MR. UNDERWOOD: Yes.

12 MR. FLETCHER: Did the Williamson Act come up in the
13 Metropolitan/PVID long-term transfer program?

14 MR. UNDERWOOD: It did in the sense that what they are
15 eligible for, and we would allow them to be eligible for
16 that. It was areas where they were trying to do other
17 federal programs which would potentially be in conflict with
18 ours, that we were concerned about support programs. If
19 they were eligible, that would not be a hindrance.

20 MR. FLETCHER: My question is, I guess, and I will make
21 it more specific than before. Were there adverse tax
22 consequences that you know about to the participants in the
23 PVID -- potential participants in the PVID program?

24 MR. UNDERWOOD: No.

25 MR. OSIAS: Could you clarify? Do you mean that one

1 happened already?

2 MR. FLETCHER: No, the one that is planned, the
3 long-term PVID.

4 MR. UNDERWOOD: To my knowledge no.

5 MR. FLETCHER: There are no adverse tax consequences?

6 MR. UNDERWOOD: Some of the parts we are looking at in
7 terms of up front payment, we are looking at stretching it
8 over a period of years so that tax consequences would be
9 more favorable to the farmer. From that point of view,
10 yes.

11 MR. FLETCHER: I have no further questions.

12 CHAIRMAN BAGGETT: Farm Bureau, you have none?

13 MR. RODEGERDTS: None.

14 CHAIRMAN BAGGETT: Mr. Du Bois.

15 We will see how long you two take and then we'll decide
16 whether to -- we'll probably take a dinner break and just
17 come back with Mr. Rossmann. I assume there will be some
18 redirect.

19 MR. SLATER: There will be some, limited.

20 CHAIRMAN BAGGETT: Some limited recross, I am
21 confident.

22 ---oOo---

23 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

24 BY MR. DU BOIS

25 MR. DU BOIS: Trying to decide how to approach this,

1 as skilled as I am.

2 CHAIRMAN BAGGETT: You manage to do pretty well, for
3 the record.

4 MR. DU BOIS: I would like to ask my first question of
5 Mr. Levy.

6 Mr. Levy, I think you indicated that it would be best
7 in a fallowing program to target the low value crops because
8 the low value crop seem to be high water use crops; is that
9 correct?

10 MR. LEVY: I believe what I said was I believe you
11 should target the low value mechanize, high water using
12 crops.

13 MR. DU BOIS: How do you -- how would you propose going
14 about that?

15 MR. LEVY: Well, I would -- if I were trying to set up
16 a program, I would propose you have some sort of reverse
17 auction arrangement and have the reference or priority for
18 certain types of crops in there. I think that you could
19 structure a program similar, that would do that.

20 MR. DU BOIS: How would you ensure against a farmer
21 dedicating all of his land to you that he wasn't going to
22 grow alfalfa on and then going to another place and renting
23 another piece of land and planting alfalfa?

24 MR. LEVY: My recollection, and this is out of the
25 earlier Palo Verde test program, there was a prohibition --

1 there was concern about that sort of thing. There was
2 prohibition from farmers being able to move over and
3 irrigate new lands or other lands that they had not been
4 irrigating. So I know it was looked at and addressed in the
5 Palo Verde test program.

6 MR. DU BOIS: So in effect a person would have to
7 subscribe all of his land in a program at the time and not
8 be able -- he would lose the flexibility of moving from
9 ranch to ranch as he found opportunities to expand his
10 operation or to change them otherwise?

11 MR. LEVY: Well, I would think that because you'd want
12 to probably make it where you distributed the opportunity to
13 everyone that has those types of crops, and that you would
14 set it up where you'd put a percentage of the land in there,
15 similar to the Palo Verde program, rather than letting a
16 farmer get totally -- go out of production in there.
17 Because if you let the farmer totally go out of production,
18 you are then going to have increase in the social economic
19 impacts.

20 The program that I was talking about that I used the
21 hypothetical, phantom farming, the farmer would be required
22 to continue to farm. That way you eliminate the
23 third-party impacts.

24 MR. DU BOIS: He would be required to continue farming
25 but required to continue not farming any particular crop?

1 MR. LEVY: Some percentage -- he would continue to farm
2 a portion of his lands and not farm the portion that is
3 fallowed. But he would still have to maintain the same
4 labor services and so forth.

5 MR. DU BOIS: But not crop mix?

6 MR. LEVY: But not crop mix.

7 MR. DU BOIS: I guess I'm confused because I don't see
8 why he would then decide not to plant wheat, but to plant
9 alfalfa at least in the ground that was not under the
10 contract, but alfalfa prices were pretty good and wheat
11 prices were not worth much, how do you prevent that?

12 MR. LEVY: In my mind he could -- on the property that
13 is not part of the program, that is not being fallowed, the
14 farmer can make the decision of what he wants to plant on
15 those grounds. I thought your original question was
16 related to could he go over and open new ground and, say,
17 fallow someplace else in IID.

18 MR. DU BOIS: I meant it more in the light of the
19 person, the farmer who wants to raise a high water use crop,
20 I use alfalfa only as an example because it could be several
21 different forage crops. Most farmers have the ability to go
22 out and out bid another farmer for a piece of ground. It
23 was not new ground. It is simply ground that has been
24 irrigated anyway, but it might be irrigated to something
25 else, in a low water use crop, at least now, and the water

1 use wouldn't necessarily decrease that much.

2 MR. LEVY: Correct. That would be one of the risks of
3 the program.

4 MR. DU BOIS: All right. I agree. That is one that I
5 have not -- someone mentioned \$444 an acre. I thought, hey,
6 I'm interested in fallowing. I'm against it, but I'm
7 interested in it.

8 CHAIRMAN BAGGETT: You will get a chance for a closing
9 statement later. Questions now.

10 MR. DU BOIS: I guess I would want to ask you one other
11 question. It might be considered as a matter of levity, but
12 I don't mean it that way. And that is can you imagine the
13 pride of a farmer who is found to be paid a subsidy for the
14 crop that he grows and also getting a subsidy for the water
15 that he doesn't use for the crop that he doesn't grow? And
16 farmers get criticized daily by people who do and don't know
17 the business for being subsidized. I think about the awful
18 situation that is going to be on the guys that have been
19 criticized like this for also fallowing some land and
20 getting paid for the water.

21 Have you thought about that?

22 MR. LEVY: Well, first place. I believe in Imperial
23 similar to Coachella, that we are not subsidized in there.
24 Now there may be a few subsidized crops in Imperial, but I
25 don't think there are many. There are a lot of subsidies

1 elsewhere and the nation, I believe, just passed a big farm
2 bill with a whole bunch of additional subsidies. In terms
3 of a national policy we seem to believe that that is
4 appropriate use of tax dollars.

5 MR. DU BOIS: Thank you.

6 I have a couple questions for Mr. Underwood.

7 I've always been interested in the approach that
8 Metropolitan Water District used. Maybe I shouldn't say the
9 approach, but results of your dealings with Imperial
10 Irrigation District and your dealings with the Palo Verde
11 Irrigation District. I guess you would say there is a
12 difference in the makeup of the Board of Directors in the
13 two districts?

14 Would you say that?

15 MR. UNDERWOOD: Yes.

16 MR. DU BOIS: Well, I think that that difference in
17 that makeup of the Board of Directors is significant. And
18 so I wonder if you could tell us your thoughts on why the
19 two boards are different?

20 MR. SLATER: Objection. Calls for speculation.
21 Relevance.

22 MR. DU BOIS: I don't think it's irrelevant. I think
23 it is highly relevant, but it does call for speculation.

24 CHAIRMAN BAGGETT: I would --

25 MR. OSIAS: Let me address the relevance.

1 CHAIRMAN BAGGETT: It is relevant.

2 MR. OSIAS: It is relevant?

3 CHAIRMAN BAGGETT: It is relevant, so I would
4 overrule. But there is speculation, I would think.

5 MR. ROSSMANN: Your Honor, perhaps the witness has got
6 personal experience.

7 CHAIRMAN BAGGETT: Answer to the best of your --

8 MR. DU BOIS: If you prefer not to answer, I will
9 furnish an answer.

10 MR. UNDERWOOD: Maybe I should hear that first.

11 Let me --

12 CHAIRMAN BAGGETT: If you have no opinion, so state.

13 MR. UNDERWOOD: This obviously is an opinion. One of
14 the -- when we worked with Palo Verde Irrigation District,
15 the Board of Trustees were farmers. So we were sitting
16 there and talking about what payments, like 550 or the
17 various concepts. They knew whether it was a good deal. So
18 it went much smoother, much faster because they had a basic
19 understanding of when we were proposing certain things they
20 understood it. I think that was one of the reasons.

21 And the other part was because we did a test program.
22 They liked the test program. Those were very difficult
23 times for farmers, and they recognized there was value
24 coming out of that. The motivation was there to do a
25 program, plus you were dealing with people on a one-one

1 basis that understood whether it was a good deal or not a
2 good deal. That helped in terms of the Palo Verde.

3 Imperial, you know, the Metropolitan and Imperial
4 conservation program I think also fared very well. That
5 program has been successfully implemented under different --
6 in every situation it is a little bit different. But I
7 think there was motivation for Imperial to want to have
8 somebody help improve their efficiency, and there was a need
9 for Metropolitan for additional water. When you have two
10 forces like that together, I think you make great progress.

11 MR. DU BOIS: Are you acquainted with the method of the
12 election of the directors in the two areas?

13 MR. UNDERWOOD: Not completely. I think I do, but I
14 could be wrong in my -- I can venture a guess.

15 MR. DU BOIS: Let me ask this way.

16 MR. UNDERWOOD: I know from Imperial. I am not sure if
17 it is at large with Palo Verde. I understand it is at large
18 in Imperial, and whether that is Palo Verde I am not
19 positive. I would assume it is, but I am not positive.

20 MR. DU BOIS: Mr. Levy, are you acquainted with the way
21 Palo Verde Irrigation District directors are elected?

22 MR. LEVY: Yes.

23 MR. DU BOIS: Could you describe that?

24 MR. LEVY: The Palo Verde Irrigation District, the
25 Board of Trustees of the Palo Verde Irrigation District are

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EVENING SESSION

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CHAIRMAN BAGGETT: Mr. Gilbert, since we are on the agricultural mind-set, we'll finish with the ag and come back with Mr. Rossmann. It is all yours.

Back on the record.

Cross-examination of San Diego County by Mr. Gilbert.

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CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

BY MR. GILBERT

MR. GILBERT: Thank you, Mr. Chairman. Most, at least of my questions, and at least at the beginning are going to be directed towards Mr. Levy.

And we have met now at least once or twice. Hope that we don't get off on a bad foot here.

In your testimony you suggested that IID might structure a conservation program so it would not cause the Salton Sea water level to recede to a level below where it would be in the absence of the proposed project. I have some questions about that.

In order to do that isn't it true that IID would need to reduce its consumptive use of Colorado River water in order to stay below the 3.1 million acre-foot cap and transfer the additional 230- or 300,000 acre-feet to other users?

1 MR. LEVY: I am sorry, can I have the question
2 repeated?

3 MR. GILBERT: Let me strike that and go to a different
4 question and come back to that one. In order to maintain
5 the Salton Sea water level, wouldn't it require that IID's
6 flows to the Salton Sea be maintained at the same rate as
7 they would be without the project?

8 MR. LEVY: Yes. The Salton Sea inflows are going to go
9 down over time without any project or transfer. And you
10 have to -- in order to match that downward curve that I
11 believe will occur, you are -- if you do a transfer, you are
12 going to have to cause water to go into the Sea. But that
13 water will have to be done in an amount that introduction of
14 that water going in will have to be done in a manner
15 consistent with the law of the river.

16 MR. GILBERT: I was thinking about the quantity more
17 than anything else at this time. I think your suggestion
18 only was that IID maintain the level at the level that it
19 would be without IID's project?

20 MR. LEVY: Yes.

21 MR. GILBERT: To do that we would have to maintain our
22 flows to the Sea at a level that would be without the
23 project also?

24 MR. LEVY: Yes.

25 MR. GILBERT: Isn't true that IID would need to reduce

1 its consumptive use of Colorado River water in order to stay
2 below the 3.1 million acre-foot cap and also transfer the
3 230- to 300,000 acre-feet that is involved in this transfer
4 as well as the hundred plus thousand that goes to Met?

5 MR. LEVY: The Quantification Settlement Agreement
6 provides that IID would be capped at 3.1 million acre-feet
7 with the exception of those years that they would be
8 utilizing the Inadvertent Overrun Program in there. So IID
9 with the QSA is limited to the 3.1, and transfers are
10 subtracted from that number.

11 MR. GILBERT: In order to make the transfers and stay
12 below the 3.1 million, IID would have to reduce its own
13 consumptive use; isn't that true?

14 MR. LEVY: They would have to reduce their consumptive
15 use from where they are at or where they have been at over
16 the past few years down to 3.1.

17 MR. GILBERT: Thank you.

18 Wouldn't that mean that IID would also have to reduce
19 its evapotranspiration, its crop evapotranspiration, to less
20 than what it has been using?

21 MR. LEVY: In order for IID to transfer water and keep
22 within the 3.1 million acre-foot cap and to have the same
23 inflow into the Salton Sea, they would have to reduce the
24 water in some -- from some location.

25 MR. GILBERT: Wouldn't that necessarily have to be from

1 crop evapotranspiration, some of that?

2 MR. LEVY: Some of it definitely.

3 MR. GILBERT: If IID were to maintain flows to the
4 Salton Sea and reduce its use of Colorado River water,
5 wouldn't that result in the Imperial District having a lower
6 district irrigation efficiency?

7 MR. LEVY: I believe it would.

8 MR. GILBERT: The proposal that you suggest where the
9 Salton Sea level is maintained and the water is still
10 transferred does have significant ramifications especially
11 concerning the QSA and the acquisition agreements and the
12 implementation agreements and so on. You're familiar with
13 those documents, are you not?

14 MR. LEVY: Generally. I have not looked at them for
15 probably at least -- I haven't looked at all of them for at
16 least a year.

17 MR. GILBERT: Maybe some of my questions you will be
18 able to answer from memory and others we may have to give
19 you documents. Let's start with a few.

20 Isn't it true that the implementation agreement
21 specifies certain actions that the Secretary of Interior
22 would take in regards to the four districts, Coachella,
23 Imperial, Palo Verde and the Authority?

24 MR. LEVY: I believe you misspoke in that you said Palo
25 Verde.

1 MR. GILBERT: Yes, I did.

2 Imperial, Coachella, Metropolitan and Authority.

3 MR. LEVY: Yes.

4 MR. GILBERT: And isn't it true that the Secretary
5 agrees in that document to deliver no more than 3.1 million
6 acre-feet to IID less amounts conserved by IID for the
7 benefit of others?

8 MR. LEVY: Yes. With the exception of the Inadvertent
9 Overrun Program that exists.

10 MR. GILBERT: And possibly certain other exceptions,
11 transfers in the future?

12 MR. LEVY: Yeah. I believe your statement mentioned
13 transfers. I am just saying there is an inadvertent overrun
14 and payback program that the Secretary agrees to implement.

15 MR. GILBERT: In that case the overruns would need to
16 be matched by paybacks in subsequent years?

17 MR. LEVY: Yes. Subject to the terms and conditions in
18 there. There are conditions whereby payback is not
19 required.

20 MR. GILBERT: This next one is a little bit more
21 detailed, and I will ask if you need we can get a copy of
22 the agreement.

23 Isn't it true that in the agreement, the implementation
24 agreement, that reasonable -- in the section entitled
25 reasonable and beneficial use it states that subject to

1 certain conditions, the Secretary does not anticipate any
2 need to assess IID's reasonable and beneficial use prior to
3 the year 20- -- or year 20 of the transfer?

4 MR. LEVY: I believe it says something to that effect.

5 MR. GILBERT: If you were IID, and I hope this isn't
6 too difficult, would you consider having the Secretary not
7 assess your reasonable and beneficial use for 20 years to be
8 a benefit?

9 MR. LEVY: Yes.

10 MR. GILBERT: Also, in the implementation agreement
11 isn't it true that it states that the QSA contemplates major
12 conservation activities to be implemented by IID over the
13 course of many years?

14 MR. LEVY: I would have to see the exact section. I
15 believe it says something to that effect, but I would not
16 want to be misquoted.

17 MR. GILBERT: May I approach the witness?

18 CHAIRMAN BAGGETT: Yes.

19 MR. GILBERT: I think IID 22, and the last item in that
20 group, Section 7.

21 MR. LEVY: Article 7?

22 MR. GILBERT: Yes.

23 MR. LEVY: I don't think --

24 MR. GILBERT: Probably B under Article 7.

25 MR. LEVY: I don't have a B under Article 7.

1 MS. DIFFERDING: What is the exhibit number?

2 MR. GILBERT: It is Exhibit Number 22 and it is the
3 last -- in mine, anyway, it is the last document in that
4 group.

5 MR. OSIAS: Exhibit 22 was unfortunately multiple
6 agreements. There is a QSA followed by the IID.

7 MR. LEVY: Let me check, I have a Page 8 at the bottom
8 of it?

9 MR. GILBERT: Yes.

10 MR. LEVY: The heading of 7 is Reasonable and
11 Beneficial Use?

12 MR. GILBERT: That's correct. And Item B, the
13 beginning of it.

14 MR. LEVY: Yes.

15 MR. GILBERT: And isn't it also true that that
16 paragraph further states that the Secretary's determination
17 to take no action regarding an assessment of IID's
18 reasonable and beneficial use for that 20-year period is
19 subject to IID's implementation of such conservation
20 measures?

21 MR. LEVY: Yes.

22 MR. GILBERT: And up in the A part, A paragraph above
23 that, isn't it true that it also states that because of the
24 commitment by IID to implement water conservation measures
25 in accordance with the terms of the QSA, the Secretary has

1 determined no action is necessary to continue whether the
2 past use of Colorado River water by IID was reasonable and
3 beneficial? And that is kind of a paraphrase.

4 MR. LEVY: Yes, it says that.

5 MR. GILBERT: If you were IID, again, would you
6 consider having the Secretary not assess your past
7 reasonable and beneficial use to also be a benefit?

8 MR. LEVY: Yes.

9 MR. GILBERT: And if you were IID and did not fulfill
10 your commitment to implement the referred to major
11 conservation activities, would you still think you had
12 contractual protection from a beneficial use review by the
13 Secretary?

14 MR. LEVY: At least as I understand the question, you
15 are asking if IID does not fulfill its obligation under the
16 agreement, would IID be protected against the Secretary
17 looking at the reasonable and beneficial use question?

18 MR. GILBERT: That is essentially it, yes.

19 MR. LEVY: If that is -- I guess I have lost the
20 question.

21 MR. GILBERT: Would you consider that a benefit? Or
22 excuse me. Would you consider that you still had
23 contractual protection against such a survey by the
24 Secretary?

25 MR. LEVY: No.

1 MR. GILBERT: In your opinion if IID implemented a
2 conservation program that maintained flows to the Sea and
3 reduced its district water use efficiency, would the
4 efficiency that IID had implemented be major conservation
5 activities?

6 MR. LEVY: Under the terms of the QSA and assuming the
7 QSA is executed, I would believe that IID would be protected
8 under the sections that are in here.

9 MR. GILBERT: Even if it did not implement those
10 measures?

11 MR. LEVY: I believe that water conservation measures
12 as defined in the QSA include land fallowing if done in
13 certain manners.

14 MR. GILBERT: So you would consider a fallowing program
15 to be equivalent to implementing major conservation
16 activities?

17 MR. LEVY: I believe the way the QSA is written it
18 would allow a land fallowing program if done in a certain
19 way to constitute a water conservation measure.

20 MR. GILBERT: Thank you.

21 Let me move over to the acquisition agreement, the one
22 involving IID and Coachella Water District. That is
23 somewhat earlier in that group of documents. In Article 2,
24 when you find it, it is titled Basic Provisions.

25 MR. LEVY: Okay, agreement for Acquisition of Conserved

1 Water Between Imperial Irrigation District and Coachella
2 Valley Water District.

3 MR. GILBERT: Yes.

4 MR. LEVY: I see your assistant is in action.

5 MR. GILBERT: Yes. Thank you.

6 Article two --

7 CHAIRMAN BAGGETT: He's hungry.

8 MR. GILBERT: The one titled Basic Provision, in
9 Paragraph B.

10 MR. LEVY: Hold on. Okay, Article 2, Paragraph B.

11 MR. GILBERT: Could you read that paragraph for me,
12 please?

13 MR. LEVY: B. CVWD will compromise certain positions,
14 acquire conserved water from IID (subject to Section 3.6
15 below) using such conserved water for CVWD Improvement
16 District No. 1 and pay IID for the conserved water available
17 for acquisition.

18 MR. GILBERT: Which of those actions by Coachella
19 Valley Water District would you consider to be a benefit to
20 IID?

21 MR. LEVY: I believe that CVWD compromising certain
22 positions is definitely a benefit to IID, and I would
23 believe that CVWD paying IID for the conserved water
24 available for acquisition would also be a benefit to IID.

25 MR. GILBERT: Thank you.

1 Do you recall what the price is that Coachella is to
2 pay IID for the water?

3 MR. LEVY: It consists of two major blocks, actually
4 three blocks in there. 50,000 and then my recollection is
5 20,000 and 30,000. From the IID standpoint the number is,
6 it becomes two blocks. The first block IID receives with
7 \$50 an acre-foot, if my memory is correct, plus an inflation
8 factor and \$3.50 for environmental mitigation.

9 The second block from the IID perspective, IID receives
10 \$125 an acre-foot plus, I believe, 3.50 an acre-foot for
11 environmental mitigation plus an inflation factor.

12 MR. GILBERT: Those started out as 1999 dollars?

13 MR. LEVY: I believe they're 1999 dollars.

14 MR. GILBERT: If I can direct you ahead to Page 14 and
15 Article 14 entitled Miscellaneous. You may be familiar with
16 this without reviewing it. But Paragraph 14.3 is titled
17 Water Use Challenges.

18 Are you familiar with that paragraph?

19 MR. LEVY: If I could have a minute.

20 MR. GILBERT: Sure.

21 MR. LEVY: Yes.

22 MR. GILBERT: Does that paragraph state the CVWD agrees
23 not to challenge the water use practices or reasonableness
24 of use of IID?

25 MR. LEVY: Yes.

1 MR. GILBERT: Would that be at least part of what was
2 referred to in Article 2 as compromising certain positions?

3 MR. LEVY: Yes.

4 MR. GILBERT: Are you aware of any other provisions in
5 this agreement that would fit within the category of
6 compromising certain positions that would be a benefit to
7 IID?

8 MR. LEVY: I believe that there are some other
9 provisions.

10 MR. GILBERT: Can you name any offhand?

11 MR. LEVY: Yes.

12 MR. GILBERT: Please.

13 MR. LEVY: It is a provision that allows the transfer
14 water outside of the IID service area. And under
15 Coachella's interpretation of the contract and I believe the
16 Secretary of Interior's interpretation of the contract water
17 cannot be transferred outside the IID service area.

18 MR. GILBERT: Would IID have to do exceptional
19 conservation measures in order to qualify the transfer of
20 that water otherwise?

21 MR. LEVY: One of the issues that we compromised in the
22 QSA and, therefore, in the implementation agreement, I
23 believe that is what I'm reading from, Agreement for
24 Acquisition of Conserved Water, is that Coachella will give
25 up its right to review IID transfers, and, therefore, IID

1 were no longer involved in that process.

2 MR. GILBERT: Are you familiar with the term "carve
3 out" as it relates to the transfer agreement between IID and
4 the Authority?

5 MR. LEVY: I would appreciate if you would refresh my
6 memory.

7 MR. GILBERT: That IID is allowed to carve out certain
8 quantity of water to transfer to Coachella and/or Met which
9 would not be made available to San Diego, to the Authority,
10 if IID chose to conserve additional water?

11 MR. LEVY: Yes.

12 MR. GILBERT: So isn't it true that if IID did not
13 transfer the hundred thousand acre-feet to Coachella, and it
14 chose to conserve that additional water, that it would be
15 able to transfer that to the Authority?

16 MR. LEVY: I don't believe that that is what the series
17 of documents that we generically refer to as the QSA
18 provide. My recollection is that IID and San Diego included
19 a provision for the carve out because of concern that Met
20 and/or Coachella would have legal claims to the water and to
21 give the two -- give San Diego and IID the ability to
22 negotiate with Coachella and Met to get the agreement
23 approved. And that negotiation took place.

24 MR. GILBERT: Wouldn't that be part of the additional
25 discretionary transfers that IID was allowed above and

1 beyond the primary transfer quantity and that water could
2 either be made available to the Authority or in case it was
3 carved out it would be made available to Coachella and Met?

4 MR. LEVY: Under my recollection of the San Diego/IID
5 agreement, is it provided for between 130- and 200,000
6 acre-feet to be made available to San Diego County Water
7 Authority and another up to a hundred thousand acre-feet
8 made available to the Authority unless the carveout was
9 exercised. And the carveout was exercised, and that was one
10 of the considerations for the settlement.

11 MR. GILBERT: If the carveout wasn't exercised or
12 wasn't necessary, then if IID chose in its discretion to
13 conserve that extra up to a hundred thousand acre-feet, they
14 would transfer under that statement agreement to the
15 Authority; is that not correct?

16 MR. LEVY: No.

17 Would you like me to explain my no?

18 MR. GILBERT: That might be good. Please.

19 MR. LEVY: That is that without the transfer to
20 Coachella, Coachella would not compromise its rights to the
21 water, and there would be no transfer.

22 MR. GILBERT: Would that preclude an agreement other
23 than transfer of water that might cause Coachella to allow
24 the transfer?

25 MR. SLATER: Mr. Chair, I'm going to object on the

1 basis of relevance and scope. There is nothing in Mr.
2 Levy's testimony with regards to this subject matter.

3 MR. GILBERT: Mr. Chairman, I believe this is key
4 because in his testimony where he suggested that we maintain
5 that IID maintain its flows to the Salton Sea, that it
6 require consideration of the agreements with Coachella and
7 the QSA and it is possible that if IID did conserve its
8 water by fallowing, that those agreements might be
9 completely different if they were renegotiated.

10 CHAIRMAN BAGGETT: Okay. Overruled.

11 MR. LEVY: Can I have the question again?

12 MR. GILBERT: Sure. We were discussing the issue of
13 whether IID would be able to conserve water, discretionary
14 additional transfers that it would make to San Diego if it
15 were not necessary to transfer that water to Coachella. And
16 I think you were saying that IID would not be able to
17 conserve that water because it would be necessary to get
18 Coachella's approval.

19 And my question was: Would it be possible that
20 Coachella's approval might be obtained some other way?

21 MR. LEVY: From the hypothetical standpoint I assume
22 that there are thousands, if not tens of thousands, of ways
23 that possibly an agreement could be structured. Other than
24 to speculate, all I can comment on is we did negotiate a
25 deal and that deal is the one that my board has given me

1 direction to go forward with. So I can't really speculate
2 on some other possible combination that might exist.

3 MR. GILBERT: Wasn't that deal struck after an
4 agreement between Imperial and the Authority that included a
5 no fallowing clause?

6 MR. LEVY: Yes.

7 MR. GILBERT: If IID's present water use practices were
8 deemed reasonable and it was maybe even required to maintain
9 the volume of its return flow to the Salton Sea, even though
10 that meant reducing its district efficiency, and it were not
11 necessary to obtain Coachella's approval, would you expect a
12 transfer to Coachella from IID to possibly involve a much
13 higher price than that which is currently being paid?

14 MR. LEVY: And I guess that is a hypothetical question,
15 and so I will answer in that manner, because Coachella's
16 approval is required by law. And so I am speculating
17 outside the range of law and I would speculate that if it
18 was not compromised the issues and a buyer wanted to buy
19 water from IID, IID would probably charge a market price.

20 MR. GILBERT: So compromising the issue was a very
21 major consideration in determining the price?

22 MR. LEVY: Yes.

23 MR. GILBERT: Can you think of any good reasons why IID
24 would want to fallow and farm less so that Coachella could
25 have more water to farm with?

1 MR. LEVY: Yes.

2 MR. GILBERT: Would you name a few?

3 MR. LEVY: Well, I believe that it allows IID to do
4 transfers and allows IID protection through the agreement,
5 the QSA and the key terms in the document and the related
6 documents to have protection against a reasonable and
7 beneficial use action by either the State Water Resources
8 Control Board and of the Department of Interior.

9 MR. GILBERT: Those reasons assume that IID benefits
10 from the transfers that were considered; is that correct?

11 MR. LEVY: I think for the reasons I named IID
12 benefits.

13 MR. GILBERT: I have a question or two for Ms.
14 Stapleton.

15 In the testimony in Exhibit 58 that San Diego County
16 Water Authority introduced today, the cost of fallowing is
17 listed for alfalfa. Could you tell us what that cost would
18 be?

19 MS. STAPLETON: This is the -- basically, this is the
20 cost to maintain a fallowed acre. And in that alfalfa and
21 hay there is two options. One is if disking is used for
22 weed control, it would be \$298.25, and if chemical is used
23 it is \$317.75 per acre.

24 MR. GILBERT: How much would that be per acre-foot?

25 MS. STAPLETON: Between \$56.27 up to \$59.95 per

1 acre-foot.

2 MR. GILBERT: Having heard the price that Coachella
3 Valley Water District is paying IID for water, does this
4 seem to exceed that amount?

5 MS. STAPLETON: Yes, it does.

6 MR. GILBERT: I have a question for Mr. Underwood.
7 Don't want you to feel left out.

8 MR. UNDERWOOD: You wouldn't hurt my feelings.

9 MR. GILBERT: In Palo Verde Irrigation District is
10 there much unfarmed land that could easily be farmed if a
11 rancher decided that since he was fallowing some of his
12 ground he wanted to find additional ground in the district?

13 MR. UNDERWOOD: To my knowledge, no.

14 MR. GILBERT: Is that same situation true in Imperial
15 Irrigation District?

16 MR. UNDERWOOD: I do not believe so.

17 MR. GILBERT: And back to Ms. Stapleton again. I think
18 you mentioned in your testimony that a fallowing program
19 might target specific soil types. Could you describe which
20 soil types might be targeted?

21 MS. STAPLETON: I think that the issue there is that
22 based upon the soil type, it often has direct impacts on the
23 amount of water utilized as well as its viability for
24 certain crops. There is good soils and medium soils and
25 coarse soils in Imperial Valley. And that would be one of

1 the options to look at. And if we were to consider crafting
2 a program that meets the Valley's needs, soils are important
3 in Imperial Valley and are in, I know at least three
4 different ranges, and you would have to look at the
5 implications of that when you are targeting a specific crop
6 type.

7 MR. GILBERT: Do you happen to have a soil type or more
8 than one soil type in mind that might be targeted?

9 MR. OSIAS: Mr. Chairman, I think we are going back to
10 the question of whether Ms. Stapleton has any expertise on
11 the subject area of farming, of soils. I don't actually
12 think they used those labels. I'd object to no expertise.

13 CHAIRMAN BAGGETT: Sustained. She is not -- I think we
14 determined earlier that she is not an expert on agriculture.

15 MR. GILBERT: I had thought that since she had made
16 that statement that she might know which soil types would be
17 involved. I will defer.

18 I think you also made mention of running -- somebody
19 made mention of running water across the field and then
20 running it into the Sea. I am curious as to how you can run
21 water across a field without much of it being lost to
22 evaporation or infiltration.

23 MS. STAPLETON: We are trying to remember who said
24 what.

25 MR. GILBERT: If anybody knows the answer, I don't need

1 to know who said it.

2 MR. LEVY: I don't believe I was the person who said
3 it, but I will attempt to at least cover two issues related
4 to it. One is you can take the water across the field if
5 you ran it in a ditch, and you would eliminate evaporation
6 or minimize evaporation in there. But I believe that what
7 is contemplated through -- as a way of getting additional
8 water into the Sea for ET fallowing is through providing
9 water for either additional leaching or other activities
10 that will improve the land for the productivity of the lands
11 and will result in water also getting into the Sea.

12 MR. GILBERT: Are you aware that a preponderance of
13 soils in the Imperial District are clay soils?

14 MR. LEVY: Yes, I am.

15 MR. GILBERT: Are you aware of the difficulty of
16 increasing leaching in those soils?

17 MR. LEVY: Yes, I am.

18 MR. GILBERT: So it would be a struggle to get much
19 more leaching water through those soils; is that a fair
20 statement?

21 MR. LEVY: There -- if you were trying to get the water
22 through the soil, yes. If you were doing what the IID, one
23 of the IID witnesses that I heard claim that there were
24 leaching benefits from running water across the land.

25 MR. GILBERT: Back to my original question on that

1 subject, though. You're envisioning a ditch or canal being
2 run across a field and the water would run that way
3 directly to the drain and would not actually cover very much
4 in the ground; is that correct?

5 MR. LEVY: No. What I was doing was answering your
6 question and saying that you were asking how would you get
7 water from one end of the field to the other without
8 evaporation. I was not proposing that you construct a
9 ditch. I am merely saying that is one way that you could do
10 it.

11 MR. GILBERT: Won't it be true that if you ran it
12 across the soil that much of it would be lost through
13 evaporation and infiltration, however?

14 MR. LEVY: If you have infiltration, that infiltration
15 is going to result in some leaching in there. So that --
16 and if you -- depending on how you ran it across the field
17 and when you ran it across the field would affect
18 evaporation.

19 MR. GILBERT: Let me ask one more question while we're
20 talking regarding the QSA.

21 Is it not true that the Secretary of Interior would be
22 bound by the definitions in the QSA?

23 MR. SLATER: Objection. Calls for speculation. Legal
24 conclusion.

25 MR. OSIAS: He answered a question based on

1 definition.

2 CHAIRMAN BAGGETT: I overrule. Clearly, Mr. Levy has
3 more than passing knowledge of the QSA. I think it is fair.
4 Answer the best --

5 MR. LEVY: Yes. The QSA -- the Secretary is not a
6 party to the QSA. So the secretary is not bound by the QSA.

7 MR. GILBERT: Or the definitions within it?

8 MR. LEVY: Or the definitions within it.

9 MR. GILBERT: I just have one last question, and I
10 think Ms. Stapleton. If after this transfer is implemented
11 and it becomes necessary to put replacement water into the
12 Salton Sea, would that water necessarily have to come from
13 Imperial Irrigation District or could it come from anywhere
14 else?

15 MS. STAPLETON: Two things come to mind. Again, it is
16 hypothetical in that to implement a plan we would hope we
17 would know if we have to put water into the Sea. And
18 technically water could come from a variety of sources,
19 from the Colorado River, that would technically be able to
20 achieve that. Whether or not that is consistent with the
21 law of river and would be legally doable, I would leave that
22 to the attorneys.

23 MR. GILBERT: The water wouldn't need to be furnished
24 by IID; it could be furnished by someone else or maybe
25 exchanged such as Coachella Valley Water District or even

1 the Central Valley of California.

2 MS. STAPLETON: Yes. I do not know the legalities if
3 it comes from another area can it be put into the Sea.

4 MR. GILBERT: It wouldn't necessarily have to come from
5 IID's allocation?

6 MS. STAPLETON: That is true.

7 MR. GILBERT: Thank you very much.

8 CHAIRMAN BAGGETT: Thank you.

9 Let's take five minutes to stretch and then we'll come
10 back with the last cross.

11 Off the record.

12 (Break taken.)

13 CHAIRMAN BAGGETT: Mr. Rossmann, you are up.

14 ---oOo---

15 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

16 BY COUNTY OF IMPERIAL

17 BY MR. ROSSMANN

18 MR. ROSSMANN: Ms. Stapleton, is it a fair
19 characterization of your Exhibit 47 that San Diego is now
20 entertaining fallowing as a potential element of the
21 transfer?

22 MS. STAPLETON: I don't think the phrase "entertaining"
23 -- I think that what we are doing is -- I believe that
24 fallowing should be analyzed as one of the alternatives for
25 the method of conservation.

1 MR. ROSSMANN: If the Imperial Irrigation District were
2 willing to include that in the transfer, would you be
3 recommending to your Board that they concur in that change?

4 MS. STAPLETON: I would wait to see what IID had
5 proposed specifically, and based upon that proposal would
6 make a recommendation to my Board. I will say that we are
7 open to the discussion with IID of modifications to the
8 agreement to make it work.

9 MR. ROSSMANN: Is that something that you would
10 anticipate actually negotiating with Imperial before you
11 reached the point before having a recommendation for your
12 Board?

13 MS. STAPLETON: I keep my Board apprised of activities
14 throughout this process and so continually report to them,
15 and that I would continue to do so before, during and after
16 any discussions with IID.

17 MR. ROSSMANN: Would the Palo Verde Irrigation District
18 measures that have been described by Mr. Underwood this
19 afternoon form one possibility that would be an attractive
20 fallowing alternative?

21 MS. STAPLETON: I don't know regarding the
22 attractiveness to the Valley other than just conversations
23 that I have had with Valley farmers, but that certainly the
24 PVID deal would be an example of a fallowing program that
25 has had on the ground experience and is under financial

1 negotiations that would be looked at and should be looked
2 at.

3 MR. ROSSMANN: Let me turn to Mr. Underwood.

4 First, PCL Exhibit 31, the program that -- sir, I don't
5 need to, I am using that for reference. That program is the
6 program that took place in the early '90s, that was a
7 two-year program; is that correct?

8 MR. UNDERWOOD: Correct.

9 MR. ROSSMANN: I recall your testimony that no impact
10 to tax revenues were experienced during that two-year period?

11 MR. UNDERWOOD: Correct.

12 MR. ROSSMANN: Had such impacts been experienced, had
13 it been Metropolitan's intention to also compensate those,
14 at least up to a certain level?

15 MR. UNDERWOOD: You would consider depending on what
16 the impact is, how significant the impact is.

17 MR. ROSSMANN: If that program had run for five years,
18 would that have increased the probability in your view that
19 there might have been tax revenue losses to the two counties
20 involved? And by that I mean Riverside and Imperial
21 Counties.

22 MR. UNDERWOOD: I don't think so.

23 MR. ROSSMANN: What is the basis for that belief?

24 MR. UNDERWOOD: Because of the -- you know, there is
25 social economic impacts, but there is social economic

1 benefits too. In other words, I think they would be
2 offsetting. In other words, the revenues and the stability
3 that the farm community or the farmers would have would be
4 offsetting.

5 MR. ROSSMANN: If one, a sponsoring agency had a
6 conviction in that view, it would at least be something on
7 the table that you would offer to consider compensating if
8 there were any lost tax revenues as a result of the
9 fallowing program?

10 MR. UNDERWOOD: Yes.

11 MR. ROSSMANN: Now in your testimony you describe and
12 seem to be a forcible and effective advocate for the program
13 that you are now considering. If we were to change the
14 players and put Imperial in the Palo Verde place and put
15 San Diego in Met's place, would you share the same
16 enthusiasm and apply that to the presently reviewed transfer
17 proposal?

18 MR. UNDERWOOD: Yes. I believe in -- I think we are --
19 to solve some of the state's water supply problems there is
20 going to have to be an urban/ag partnership, effective
21 partnerships. And when you are dealing with 10 percent, 20
22 percent, that very well may be the way that provides the
23 stability to the farming community. Those are the rules,
24 the rural way of life. So I think it can be an effective
25 mechanism, not only for bringing economic stability but also

1 in terms of meeting the future water needs of the state.

2 MR. ROSSMANN: So you would commend that program to the
3 two parties who are the petitioners here?

4 MR. UNDERWOOD: I would say that -- when we started
5 with Palo Verde program, we defined what their goals were
6 and what our goals were, and then we structured a program to
7 meet those goals. So the same thing would have to apply in
8 Imperial. You may have to tailor the program to meet the
9 specific needs or goals of each of the parties.

10 MR. ROSSMANN: It is your conviction that that program
11 would not produce unreasonable environmental or economic
12 effect in Imperial County?

13 MR. UNDERWOOD: I think there would be a program that
14 could minimize or to mitigate any of those impacts, yes.

15 MR. ROSSMANN: Mitigate them to the degree to which
16 they were not unreasonable?

17 MR. UNDERWOOD: Correct.

18 MR. ROSSMANN: If that were the evidence, you would
19 support this Board rendering that finding?

20 MR. UNDERWOOD: Yes.

21 MR. ROSSMANN: Now I would like to focus for a minute
22 on the Environmental Impact Report that you all are now in
23 the process of. I believe that is San Diego's Exhibit 50.
24 Socioeconomic analysis and assessment is not part of this
25 EIR; is that correct?

1 MR. UNDERWOOD: Correct. It is not required, but we
2 are doing a social economic impact analysis or assessment.

3 MR. ROSSMANN: That hopefully is completed in the next
4 month or so?

5 MR. UNDERWOOD: Correct.

6 MR. ROSSMANN: Let me ask a technical question here.
7 Do you anticipate that this Board, and by that I mean the
8 State Water Resources Control Board, will have approval
9 authority over that program, over the program between
10 Imperial and Palo Verde? I am sorry, between Metropolitan
11 and Palo Verde?

12 MR. UNDERWOOD: No.

13 MR. ROSSMANN: Why is that?

14 MR. UNDERWOOD: Because of being under contracts with
15 the federal government, and it would take the concurrence of
16 potential affected parties, meaning Coachella, Imperial and
17 the concurrence of the Secretary. It is within the priority
18 system and consistent with the contracts.

19 MR. ROSSMANN: Does the Bureau have to render any
20 approvals to make this program work?

21 MR. UNDERWOOD: They would have to concur that the
22 program is consistent with the existing contracts and law.

23 MR. ROSSMANN: They would have to approve the diversion
24 of the conserved water at Parker Dam, would they not?

25 MR. UNDERWOOD: They would concur. They would -- they

1 would provide for the delivery of water consistent with the
2 program if they believed it was consistent with contracts
3 and other provisions of the law and the river.

4 MR. ROSSMANN: What I have in mind is that your
5 colleagues sitting to your right commented on this Draft
6 EIR, that is to say I see a letter from Mr. Levy in which he
7 asserted that the Bureau or the federal government would
8 have to render approval and that a NEPA document should also
9 be prepared.

10 Is that correct, that Mr. Levy made that comment?

11 MR. UNDERWOOD: I hate to admit it; yes, he did make
12 that comment.

13 MR. ROSSMANN: Without asking you to advance your
14 response, do you have a response today?

15 MR. UNDERWOOD: No. Because my response is that it is
16 not a major federal action. They are just comparing -- in
17 other words, it is consistent with existing contracts. It
18 is not a major federal action and requiring then an
19 environmental impact statement from the federal government.

20 MR. ROSSMANN: If there had been a NEPA document, if it
21 had been a joint EIS/EIR, such as the one for our subject
22 transfer, then socioeconomic analysis would have been part
23 of that NEPA document; is that correct?

24 MR. UNDERWOOD: Correct. Like I said, we are
25 voluntarily doing the assessment, voluntarily creating the

1 community program.

2 MR. ROSSMANN: It is good to have that understanding.

3 Thank you, sir.

4 Now, under the Palo Verde program, as I understand it,
5 a farmer can fallow his or her field for a maximum period of
6 five continuous years; is that correct?

7 MR. UNDERWOOD: Up to five years is correct.

8 MR. ROSSMANN: That is not the customary practice
9 right now in the Palo Verde Irrigation District, is it?

10 MR. UNDERWOOD: No. Generally they will go to two to
11 three years, but this was -- in our discussion with Palo
12 Verde that they would like to have the option to go to five
13 years. The problem is you start running into soil salinity
14 problems, the longer you keep your lands out of production.
15 Generally it is only two or three years.

16 MR. ROSSMANN: That's what you'd consider to be the
17 normal agricultural regime?

18 MR. UNDERWOOD: That wanted some flexibility. It
19 obviously makes our program administration a little simpler.
20 But in terms of the land they are paying a price because
21 they will have to do other actions; in other words, they
22 will incur other costs to bring their lands and keep them in
23 production -- productive.

24 MR. ROSSMANN: After that long period, relatively long
25 period?

1 MR. UNDERWOOD: It would be at their expense that they
2 would incur those costs.

3 MR. ROSSMANN: Am I reading your Environmental Impact
4 Report correctly to understand that in addition if they
5 don't produce more than three out of five years that the
6 classification of the land under the Williamson Act will
7 change?

8 MR. UNDERWOOD: Repeat that.

9 MR. ROSSMANN: Let me make it easier for you and ask
10 you to turn to Page 4-12 of your document, and then I will
11 repeat the question. I guess actually the paragraph I would
12 ask you to look at starts on Page 4-11.

13 MR. UNDERWOOD: I will read it.

14 MR. ROSSMANN: Yes, sir.

15 MR. UNDERWOOD: Okay.

16 MR. ROSSMANN: Am I correct in understanding that when
17 the document says some farms, however, may fail to meet the
18 criteria for prime agricultural lands as result of program
19 implementation, is that referring to the fact that a farm
20 that fallows for five years in a row would not meet the
21 requirement for prime ag land of producing for three of five
22 years?

23 MR. UNDERWOOD: Let me read the following paragraph.

24 MR. ROSSMANN: Yes, sir.

25 MR. UNDERWOOD: Yes.

1 MR. ROSSMANN: Would it be fair to say that in lowering
2 the classification out of prime agricultural lands that this
3 program would not necessarily promote the productivity of
4 agricultural lands?

5 MR. UNDERWOOD: That's correct.

6 MR. ROSSMANN: Also on this document, sir, before I
7 conclude this line of questioning, the Imperial County Air
8 Quality Management District commented on your notice of
9 preparation, did they not?

10 MR. UNDERWOOD: I believe so. I don't recall the
11 document or the contents.

12 MR. ROSSMANN: I think we can find it, but let me ask
13 the question. Maybe it will refresh your recollection,
14 recognizing that we'd all like to finish as early as
15 possible tonight. Didn't the Air Quality Management
16 District say that air quality impacts resulting from
17 fallowing had to be addressed in the Draft Environmental
18 Impact Statement?

19 MR. UNDERWOOD: I do remember that, correct.

20 MR. ROSSMANN: Did I understand your testimony earlier
21 this afternoon that one of the means for reducing those
22 impacts is called clodding?

23 MR. UNDERWOOD: Clod plowing.

24 MR. ROSSMANN: That requires water; is that correct?

25 MR. UNDERWOOD: Correct. It is initially to wet up the

1 soils so when you plow them that they will maintain a crust,
2 so to speak, that will deteriorate with time.

3 MR. ROSSMANN: The reason I asked that is that water
4 wasn't expressly mentioned when that was described in the
5 document as I read it, so it is helpful to have that
6 explanation.

7 So just if I could sum up on this line of questioning,
8 Metropolitan would not object if the transfer agreement were
9 renegotiated to enable fallowing to take place in the
10 Imperial Valley?

11 MR. UNDERWOOD: That is the San Diego and Imperial
12 transfer?

13 MR. ROSSMANN: Yes, sir.

14 MR. UNDERWOOD: No, we would not. What we are
15 interested in is meeting the objectives of the transfers of
16 the waters and also the provisions for the surplus
17 guidelines.

18 MR. ROSSMANN: It was a prerequisite to the transfer
19 that it enabled a finding from this Board that there was no
20 unreasonable economic or environmental effects in the
21 Imperial County, that would be another reason for supporting
22 this transfer?

23 MR. UNDERWOOD: Correct.

24 MR. ROSSMANN: Let me ask perhaps a harder question.
25 Would Metropolitan object if the QSA had to be renegotiated

1 to obtain the same result?

2 MR. UNDERWOOD: Probably because, just like my
3 colleague Mr. Levy, people compromised a lot of their
4 positions to get where we are relative to the QSA.
5 Reopening that would probably be very difficult. If there
6 were minor modifications that would allow us to meet the
7 objective, yes. But Metropolitan assumed a lot of risk.
8 They assumed the risk for overusage by priorities one, two
9 and three B. There is a number of other risks and expenses
10 that Metropolitan assumed in that process. And we would be
11 concerned about renegotiations because of what we've already
12 compromised. If it was, like I said, minor modifications to
13 accommodate the objectives, probably not.

14 MR. ROSSMANN: Well, we've all learned a lot in these
15 proceedings in the last month or so. And, in fact, that
16 seems to have led San Diego to now at least suggest to its
17 partner that they might want to change their agreement. So
18 it is possible that what we learn in these proceedings could
19 also cause the four parties to readdress the QSA?

20 MR. UNDERWOOD: There are individuals -- if you are
21 doing the acquisitions and it doesn't affect potentially
22 doing a method for fallowing or a method for conservation,
23 it would not be inconsistent with the QSA. It may be
24 inconsistent with the present, the present form of the
25 agreement between the two parties. But if you would look at

1 the QSA and the definition of conservation in the QSA, it
2 includes following.

3 MR. ROSSMANN: But does not require it?

4 MR. UNDERWOOD: Correct.

5 MR. ROSSMANN: Is it the position of Metropolitan that
6 in order to comply with the Secretary's guidelines, the QSA
7 itself does not have to be executed by December 31st?

8 MR. UNDERWOOD: No.

9 MR. ROSSMANN: I don't want to clutter the record, but
10 I want to make reference at least to a letter signed by your
11 executive, I guess the title now is Chief Executive Officer,
12 we used to call them general managers I guess before we all
13 got corporate here.

14 MR. UNDERWOOD: Correct.

15 MR. ROSSMANN: Dated 27 August 2001, in which Mr.
16 Gastellum said it is not in California's interests for the
17 benefits of surplus Colorado River water to hang on the
18 slender reed of QSA execution by December 31, 2002.

19 Does that sounds familiar to you?

20 MR. UNDERWOOD: Yes.

21 MR. ROSSMANN: I have accurately read from that letter?

22 MR. UNDERWOOD: Yes, you have.

23 MR. ROSSMANN: That sounds to me like Metropolitan was
24 perhaps anticipating that there might need to be further
25 negotiation of the QSA before it could reach a form executed

1 by all the parties.

2 MR. UNDERWOOD: No. I think it refers more to
3 compliance with the guidelines, in other words, for the
4 interim surplus guidelines to stay in place. If you look
5 and read on in the surplus guidelines not only does it talk
6 about signing of the QSA by a certain time, and then it says
7 until or unless California meets certain requirements.

8 MR. ROSSMANN: My reading of this letter, and I think
9 perhaps what I should do is mark this.

10 CHAIRMAN BAGGETT: Yes.

11 MR. ROSSMANN: I think that is fair for everyone, to
12 mark it as Imperial Exhibit 5.

13 MR. SLATER: Counsel have copies?

14 MR. ROSSMANN: I try to come prepared, yes, sir. I
15 think approximately 12 are here for the staff and the Chair,
16 and I do have copies for everyone else here.

17 MR. UNDERWOOD: There is also a clarifying, follow-up
18 letter which, if you have it, would be good for the record,
19 too.

20 MR. OSIAS: Did somebody cross-examine on this letter?

21 CHAIRMAN BAGGETT: Mr. Rossmann, this letter is not
22 already in the file? It has come up in these proceedings.

23 MR. ROSSMANN: It has come up, but I don't think it's
24 been introduced yet.

25 MR. SLATER: It has not been introduced. It was

1 testified about by Mr. Kirk and also the subject or cross on
2 the same.

3 MR. KIRK: I didn't introduce it.

4 CHAIRMAN BAGGETT: Thank you.

5 MR. ROSSMANN: That was -- we are introducing this. We
6 marked it.

7 So you are familiar with this letter, sir, and to your
8 knowledge --

9 MR. UNDERWOOD: I had to explain that for a lot of
10 people. Yes, I am very familiar with it.

11 MR. ROSSMANN: Authenticity, then, is not an issue.

12 MR. UNDERWOOD: I said there is a follow-up letter for
13 clarification that the CO also did.

14 MR. ROSSMANN: I have not seen that letter, sir, so if
15 you could describe that that would be helpful.

16 MR. UNDERWOOD: The language was that it was looking at
17 -- I think what he -- if I recall correctly, it's been some
18 time. He did some clarification as to the other
19 alternatives that may be available if, in fact, there is
20 difficulty or if there is a problem with executing. We
21 could have a suit. We could have the State Board process
22 take longer. That is what he is referencing in here, there
23 is certain things that could happen that are beyond really
24 our control. You need to consider those and not necessarily
25 just have just the absolute. In other words, if the other

1 states knew that we were going to comply and it took a month
2 longer, I don't think there would be a problem. It would
3 require concurrence of them and the Secretary. That is what
4 he was looking at.

5 MR. ROSSMANN: I think if -- looking at Page 1 of this
6 letter on the other side, if California met these functional
7 criteria on these benchmark dates from 2003 to 2012, the
8 Secretary and our sister states would be satisfied that
9 California was complying?

10 MR. UNDERWOOD: No.

11 MR. ROSSMANN: Why is that?

12 MR. UNDERWOOD: Two things that the states are
13 interested in. One was a binding document that the entities
14 had between themselves to actually do the transfers. You
15 could make a lot of oral promises, but not necessarily have
16 any documents in place. That's why they looked at it.
17 There were options of doing legislation. There was options
18 of reopening the decree in Arizona versus California. None
19 of those were options that people wanted to pursue.

20 MR. ROSSMANN: That is clearly the nuclear alternative
21 that probably none in this room wants.

22 MR. UNDERWOOD: The concept was then looking for
23 binding commitments, and then they are looking for proof
24 that you are going to do it. They were measuring your
25 progress. They are measuring on your progress of the

1 benchmarks. So there is two things they're interested
2 in. And same thing that the Secretary was interested in.

3 In fact, the Secretary's office initially wanted us to
4 complete everything by year prior to the December. In other
5 words, they thought that we could potentially do all of our
6 environmental work, and in the discussions initially they
7 were looking at completing it all by December 2001, not
8 2002. Just because they didn't think the environmental work
9 and the other issues were going to be major obstacles.

10 MR. ROSSMANN: Is it fair to say that they may have
11 emerged in the last month and a half as bigger obstacles
12 than you anticipated, say, three or four months ago?

13 MR. UNDERWOOD: Probably not three or four months
14 ago. I think it was testified before that we are sure by,
15 at that time, the Secretary of Interior representative, the
16 Deputy Secretary, and by the state and by the 1998 act
17 relative to the Salton Sea reclamation that the burden, the
18 burden of reclaiming the Sea was not going to be on the
19 transfers, that we would have to mitigate, however, impacts,
20 but it would not be responsible for full reclamation of the
21 Sea.

22 MR. ROSSMANN: Let me make a suggestion since San Diego
23 is going to be finished tonight, it would be helpful to get
24 that second letter somehow so that all of us would have
25 that. And I know that Imperial, for example, still has its

1 shot here and perhaps I'm just going to say out loud that it
2 would be really nice if we can get that letter, and I wish
3 you could be here.

4 CHAIRMAN BAGGETT: I would also appreciate a cleaner
5 copy.

6 MR. UNDERWOOD: You can't read it. It is the
7 provisions of the surplus guidelines that you can't really
8 read in this document.

9 CHAIRMAN BAGGETT: Could you provide --

10 MR. SLATER: We will make an offer of proof that we
11 will produce both this letter and the follow-up letter
12 tomorrow, Dennis.

13 CHAIRMAN BAGGETT: If you would send it electronically
14 that would be great.

15 MR. SLATER: Subject to the foundation that this
16 witness previously laid.

17 CHAIRMAN BAGGETT: There is no objection?

18 MR. ROSSMANN: There is not, sir. I don't want to take
19 the stand about how many questions -- about how many times I
20 had to ask for a better copy of this document. This is my
21 best, magnified at 120 percent.

22 CHAIRMAN BAGGETT: I will have some questions now, but
23 I can barely read it.

24 MR. SLATER: We will identify this as San Diego --
25 identify this as the following, San Diego 61 and 62.

1 MR. ROSSMANN: Why don't we identify this. I want to
2 get this one into evidence tonight as Imperial County
3 Exhibit 5 and the follow-up letter can be your next in
4 order. That would be agreeable, sir.

5 CHAIRMAN BAGGETT: Imperial 5 and San Diego 6.

6 MR. UNDERWOOD: It is the CO's responsibility for water
7 supply for 17,000,000 people. He has to have some
8 alternatives, and that is what he was trying to say here to
9 Tom Hannigan, if something goes wrong that we can't just
10 allow 17,000,000 people to be at risk.

11 MR. ROSSMANN: Until that document is signed, everyone
12 in this room is entitled to still look at alternatives?

13 MR. UNDERWOOD: Of what?

14 MR. ROSSMANN: To the QSA as presently drafted but not
15 signed.

16 MR. UNDERWOOD: I think you would have a very difficult
17 time trying to meet the deadline if you are going to modify
18 the QSA in any major way. That is my own opinion. You
19 would have a very difficult time.

20 MR. ROSSMANN: Well, will we have difficulty meeting
21 the deadline if we modify the transfer that is the subject
22 of these proceedings to now authorize or even require
23 fallowing in the Imperial Valley?

24 MR. UNDERWOOD: Is that a statement or a question?

25 MR. ROSSMANN: That is a question, sir.

1 MR. UNDERWOOD: Repeat it.

2 MR. ROSSMANN: Will we have difficulty meeting the
3 deadline if the transfer agreement that is the subject of
4 these proceedings is modified to authorize or even require
5 fallowing to Imperial Valley?

6 MR. UNDERWOOD: I think if there is a meeting of the
7 minds of the two parties, no.

8 MR. ROSSMANN: Thank you, sir. That's been very
9 helpful.

10 Mr. Levy, let me ask you a few questions, sir. I take
11 it you would agree with me that what Mr. Underwood said
12 that, the proposed PVID program with up to five years of
13 continuous fallowing on a particular field is a departure
14 from the customer agricultural practices in the Palo Verde
15 Irrigation District?

16 MR. LEVY: I believe that is correct.

17 MR. ROSSMANN: That would also be a departure from the
18 customary practices in the Imperial Irrigation District,
19 would it not?

20 MR. LEVY: Yes.

21 MR. ROSSMANN: Earlier this afternoon or perhaps it was
22 this evening, I think it was in response to Mr. Gilbert's
23 question, you said that fallowing as authorized by the QSA
24 would be appropriate if "done in a certain way."

25 Could you explain what that certain way is that you had

1 in mind?

2 MR. LEVY: Well, I would think that I covered some of
3 that issue before. And, I guess what I visualize is that it
4 would be temporary fallowing done on a voluntary basis,
5 using the lower value mechanized, highly mechanized crops
6 which have high water use in there, and with the social
7 economic impacts mitigated and the environmental impacts
8 mitigated.

9 MR. ROSSMANN: You would also, then, support in review
10 of such a program a finding that it does not produce
11 unreasonable economic or environmental effects in Imperial
12 County?

13 MR. LEVY: I'm sorry, could you --

14 MR. ROSSMANN: You would support a fallowing program if
15 this Board could make a finding that it would not produce
16 unreasonable economic or environmental effects in Imperial
17 County?

18 MR. LEVY: Yes.

19 MR. ROSSMANN: I'm going to ask you a clear
20 hypothetical. In order to get everyone to squeeze their
21 share to bring us within 4.4 million acre-feet, could not
22 as a legal matter, but admittedly a hypothetical one, could
23 not Coachella agree to fallow, for example, 50,000 acre-feet
24 per year and make that water available to the Salton Sea?

25 MR. LEVY: If you are talking in the complete

1 hypothetical standpoint, yes.

2 MR. ROSSMANN: In other words, there is a set of
3 circumstances where that could be done and it would be in
4 compliance with the law of the river as you understand it?

5 MR. LEVY: I guess I was thinking of the question
6 differently, so if I could have the prior -- that question
7 repeated that I answered so I could make sure I am answering
8 it --

9 MR. ROSSMANN: I won't put Esther through that, but I
10 will try to see if I could formulate it exactly as I did.

11 (Record read as requested.)

12 MR. LEVY: And I think my answer was yes, and that is
13 correct.

14 MR. ROSSMANN: So that could be done consistently with
15 the law of the river?

16 MR. LEVY: I can visualize hypothetical ways in which a
17 hypothetical fallowing program could be constructed that
18 would allow the hypothetical water from that to go into the
19 hypothetical Salton Sea.

20 MR. ROSSMANN: And it would come from a hypothetical
21 farmer.

22 MR. OSIAS: Would it be a phantom?

23 MR. ROSSMANN: Thank you very much. That answers my
24 question.

25 Ms. Stapleton, let me return to you for a moment,

1 then. I think you probably already answered this question,
2 but let me just make sure I understand the significance of
3 your testimony to us this afternoon.

4 San Diego, and I am using San Diego to mean the
5 authority, would be prepared to reopen the transfer
6 agreement if the Imperial Irrigation District proposed a
7 fallowing component?

8 MS. STAPLETON: Yes.

9 MR. ROSSMANN: And you would be prepared to include or
10 look at the Palo Verde Irrigation District model as one way
11 to carry out that fallowing program?

12 MS. STAPLETON: Yes.

13 MR. ROSSMANN: Does that mean that San Diego would be
14 willing to create a fund to compensate for third-party
15 impacts that might be occasioned within the Imperial Valley?

16 MS. STAPLETON: I think the socioeconomic impacts are a
17 critical component that we would want to look at in two
18 manners. Number one is how can they be reduced as much as
19 possible. And then secondly how to mitigate for those
20 impacts. And, absolutely, we would consider that an
21 important component in any discussion related to fallowing
22 or land management program.

23 MR. ROSSMANN: The beneficiaries of those funds might
24 include people who are not parties to the contract between
25 your agency and the Imperial Irrigation District?

1 MS. STAPLETON: Yes.

2 MR. ROSSMANN: Would San Diego also be willing to
3 reimburse the Imperial Irrigation District for the
4 administration costs of conducting a fallowing program?

5 MS. STAPLETON: The administrative costs related to
6 program implementation are part of the existing contract and
7 consideration, and we would assume that any program
8 implemented in IID, in Imperial Valley, would have an
9 administrative cost that needs to be considered for IID in
10 administering the program.

11 MR. ROSSMANN: Let me understand that.

12 The existing transfer agreement, proposed transfer
13 agreement, provides for administration costs in addition to
14 the per acre-foot charge?

15 MS. STAPLETON: No. Actually it was we pursued what
16 additional costs IID would incur as a result of the water
17 transfer program and David Osias mentioned several of those,
18 such as potentially lost sales, lost power, administrative
19 costs, and that was part of the consideration when we came
20 up with the single number on a per acre-foot basis.

21 MR. ROSSMANN: My understanding of the Palo Verde
22 transfer proposal or fallowing proposal is that in addition
23 to the per acre-foot paid to the farmer, there is also a
24 separate line item for administrative costs paid directly to
25 the district, and I see Mr. Underwood is nodding

1 affirmatively on that.

2 MS. STAPLETON: Yes. My understanding of the
3 structure is rather than lumping all of those covered costs
4 into a single per acre-foot amount, Metropolitan and Palo
5 Verde chose to actually segregate them, identify that which
6 goes to the landowner or farmer, that which goes to the
7 district, that which goes to the community. And certainly
8 the Water Authority would be receptive to dissecting the
9 cost and identifying which specificity where each element of
10 that cost would go.

11 MR. ROSSMANN: If those costs increased as a result of
12 fallowing as opposed to on-farm conservation, do I
13 understand that San Diego would be willing to, if you will,
14 agree to pay for those higher costs?

15 MS. STAPLETON: No, you don't understand kind of where
16 I was going. What we would do is look at what is, if you
17 were to -- if you were moving from an on-farm conservation
18 program to a fallowing program, just as we did in the
19 on-farm conservation program, the Water Authority would
20 identify what costs are attributed to each of the
21 components, and we would evaluate that information in
22 determining what the appropriate expenditure is. You need
23 to -- certainly we would also keep in mind the other
24 elements in determining appropriate costs such as other
25 available supplies. But, you know, thinking of the

1 transportation cost, the reliability, the quality and so
2 forth.

3 MR. ROSSMANN: I will come back to some of those
4 component costs when I close, but I think we are on a line
5 here that I would like to continue.

6 A final component, lost tax revenues, either sales or
7 real property taxes in Imperial County and its political
8 subdivisions. I see you nodding now. Does that mean that
9 San Diego would now be willing to entertain the
10 establishment of a fund to reimburse those costs if they are
11 shown to result from a fallowing program?

12 MS. STAPLETON: That would be an example of a cost that
13 was not realized in an on-farm conservation program. And,
14 again, we would be interested in entering into a discussion
15 about any potential impacts related to such as property
16 taxes or local government generated revenues.

17 MR. ROSSMANN: Thank you.

18 Now as I understood your written testimony, your
19 anticipation was that after there were a fallowing program,
20 this hypothetical program if you will, established in
21 Imperial County and the Imperial Irrigation District and
22 agreed to and part of a revised transfer agreement, that
23 program would come back to this Board for review?

24 MS. STAPLETON: The concept that is in my testimony is
25 that the petitioners could return with the specificity of

1 the program to the Board as part and parcel of the process.

2 MR. ROSSMANN: I see. Do you envision that that review
3 would be necessary to complete action on the petitions,
4 excuse me, the petition that is before the Board?

5 MS. STAPLETON: I would assume that as long as it was
6 consistent with the Board's original findings that that
7 would suffice, that it would not be a separate hearing
8 process.

9 MR. ROSSMANN: Is it your anticipation that this Board
10 could find that the establishment of such a second tier
11 review, if you will, or phased review, would enable the
12 Board to find in advance of that second tier review that the
13 proposed transfer would not produce unreasonable economic or
14 environmental effects in Imperial County?

15 MS. STAPLETON: I need you to rephrase that question.

16 MR. ROSSMANN: I'll do that. I will state it again,
17 but here is the premise. Is it your anticipation -- let me
18 back up a bit.

19 I read your testimony to mean this, that you felt the
20 Board could go forward and approve the transfer even though
21 the following program was not resolved and that the Imperial
22 Irrigation District would prepare a following plan and then
23 that plan would come back to this Board for review.

24 Is that a correct understanding of your testimony?

25 MS. STAPLETON: My understanding is that the Board's

1 jurisdiction is related to water rights and the
2 environmental implications of such a transfer, and that the
3 socioeconomic element is not with, per se, within the
4 purview. If there was clear direction from the Board that
5 the program, in fact, needed to be within a specific
6 framework and those findings were clear, then it would be a
7 matter of just IID recording back on the specificity of the
8 program, putting flesh on the bones.

9 MR. ROSSMANN: Let me just take a second here.

10 I am looking at Page 12 of your testimony. It seems to
11 imply that the Board would retain jurisdiction to ensure
12 that the impacts of the final program are not unreasonable?

13 MR. SLATER: Is that a question?

14 MR. ROSSMANN: That is a question. I am sorry, sir.
15 Thank you.

16 Am I correctly understanding your testimony there?

17 MS. STAPLETON: Can you tell me specifically where you
18 are referring in my testimony?

19 MR. ROSSMANN: Well, IID agrees to range for and secure
20 effective mitigation, et cetera, attributable to the
21 proposed project in the event the Board finds such impacts
22 to be unreasonable.

23 MS. STAPLETON: The et cetera part was related to the
24 mitigation of potential adverse impacts on fish and
25 wildlife. So it would be related to specifically the

1 environmental impacts.

2 MR. ROSSMANN: Let me ask: Is it your position that
3 this Board should not determine that the proposed transfer
4 will not produce an adverse impact in Imperial County on
5 both economic and environmental grounds?

6 MS. STAPLETON: My understanding that is not within
7 their purview, the socioeconomic -- that the petition is
8 more specifically water rights and the environmental
9 impacts.

10 MR. ROSSMANN: Thank you.

11 Mr. Levy, in your written testimony I think you touched
12 on this same process. And I understood your testimony to
13 support a two-phased review by this Board.

14 Is that correct, looking at Page 2, that the IID could
15 develop its conservation program, demonstrating to the State
16 Water Resources Control Board satisfaction that the
17 conservation program is proceeding as promised?

18 MR. LEVY: What I believe is that the Board could
19 approve the transfer, make the findings that are necessary,
20 and then IID could in a period after that set of findings
21 develop the details of the program that complies with the
22 order of the Board and then submit that to the Board for the
23 Board to concur that it meets the intent of their order.

24 MR. ROSSMANN: So the Board could impose conditions, I
25 hate to use that word "impose," it sounds too regulatory,

1 establish conditions that are not fulfilled as of the date
2 of approval. But that the approval would be conditioned
3 upon a showing that those conditions were met within some
4 reasonable subsequent period?

5 MR. LEVY: Yes.

6 MR. ROSSMANN: My final question on this general area
7 to Ms. Stapleton. I think all of us here should appreciate
8 that what you have just described to us represents a major
9 change in the San Diego position from that which you
10 testified to when you were last here; is that correct?

11 MS. STAPLETON: I don't believe so.

12 MR. ROSSMANN: I recall that I asked you about
13 third-party impacts. And in response to that line of
14 questioning, Mr. Slater did redirect examination, and I am
15 looking here at Page 439 of the reporter's transcript, and I
16 will just summarize your testimony. Then if you wish to see
17 this we can spend some time on it. I hope it is not
18 necessary. That your view then was that there was going to
19 be no third-party impact reimburse issue because all impacts
20 were going to be confined to those in contract by this
21 transfer and, therefore, there would be no reason to even
22 address third-party impacts?

23 MS. STAPLETON: Is that related to the on-farm
24 conservation program?

25 MR. ROSSMANN: My understanding of your testimony was

1 -- let me just read it here.

2 Mr. Slater: Your understanding -- is it
3 your understanding under the transfer
4 agreement that IID farmers should be able
5 to farm an equivalent amount of land that
6 they farmed previously, before the
7 conservation efforts?

8 Your answer: Yes. It was the intent --
9 it was the desire of IID and San Diego that
10 the agricultural economy not be impacted by
11 transfer agreement and that they would be able
12 to achieve the same yield as they do presently
13 once the transfer and conservation programs
14 are implemented.

15 MS. STAPLETON: Correct. I do recall stating that.

16 MR. ROSSMANN: Then Mr. Slater asked you:

17 So in that regard there would be no need to
18 add additional money or make additional money
19 available under the transfer agreement as it
20 presently exists?

21 Your answer was: Correct. The amount of the
22 funds that San Diego is willing to pay was an all-inclusive
23 amount, which included all of the components you
24 referenced.

25 And this afternoon you told us that still holds true

1 with respect to administration costs, but with respect to
2 third-party impacts such as unemployment or tax revenues San
3 Diego is now willing to address those compensation costs?

4 MS. STAPLETON: Let me add some clarity. The quotes
5 that you had from my earlier testimony related specifically
6 to on-farm conservation and that agreements IID and San
7 Diego negotiated in the structure of the on-farm
8 conservation was to really minimize or eliminate any
9 third-party impacts so that the farmers would continue to
10 farm in the same manner and so forth.

11 What you have introduced today is, in your questions,
12 relates to a fallowing or land management program, and, yes,
13 that we would consider third-party impacts, impacts to the
14 local governments' tax basis and so forth because it is a
15 fundamentally different methodology of conservation. And
16 with that you are basically trading the environmental
17 impacts to the Salton Sea that we have all talked about with
18 on-farm conservation, you are reducing or eliminating those,
19 but you are creating different impacts. And what I want to
20 make clear is that San Diego is aware that those impacts are
21 different and they must be addressed and that we would be
22 receptive to the discussion about identifying what those
23 impacts are, what the associated costs are, methods to
24 reduce where possible and then ultimately mitigate.

25 MR. ROSSMANN: Thank you.

1 And that hasn't been done to date in the present Draft
2 Environmental Impact Report; is that correct?

3 MS. STAPLETON: That is correct.

4 MR. ROSSMANN: Thank you.

5 Let me just conclude and, Mr. Chairman, I'm almost done
6 with some very specific questions.

7 At the beginning of your testimony you talked about
8 doing comparable analysis and I think Exhibit 54 is what you
9 identified, looking for comparable other transfers in
10 California that assisted you in determining the fair market
11 value, if you will, of this transfer. I don't think you
12 need to look at that unless in answer to my question you
13 need to.

14 Am I correct that none of the examples cited there or
15 the agency, excuse me, the Authority looked at and had a
16 following component to them?

17 MS. STAPLETON: I cannot speak to the short-term one, I
18 believe the State Water Bank one probably had some
19 component. But what I would say is that this was used just
20 as a another information point, and we did not use this as
21 absolute restrictions on what we were willing to pay for the
22 cost on a per acre-foot basis. It provided us input,
23 guidelines, help, but it was just one of many
24 considerations.

25 MR. ROSSMANN: Did you have in doing this due

1 diligence, which is admirable, of course, did you have a
2 long-term transfer that featured fallowing as one of your
3 comparables?

4 MS. STAPLETON: I cannot recall and would have to
5 refresh my memory by going through the backup documents to
6 see if any of these specifically were a fallowing program.

7 MR. ROSSMANN: Thank you.

8 In looking at alternatives this afternoon, you
9 mentioned that one of your alternatives determining the
10 price that Met would charge for water. Let's suppose
11 another hypothetical. That there is no Metropolitan water
12 available for sale. And if that were true, then the
13 comparable of the price that Met might have charged in 1999
14 or 2001, and that really drops out as an alternative to
15 consider; is that correct?

16 MS. STAPLETON: Yes.

17 MR. ROSSMANN: And, in fact, wouldn't we expect
18 Metropolitan's price to be somewhat different if
19 Metropolitan loses 660,000 acre-feet in bringing California
20 within 4.4?

21 MS. STAPLETON: Metropolitan has over the past ten
22 years taken specific steps related to water supply, and that
23 it's in anticipation of the loss of the water. Obviously,
24 some of those costs we are paying for now through our water
25 rate, and I would anticipate there will be additional costs

1 involved as well. What that specific number is 20 years
2 from now we are uncertain.

3 MR. ROSSMANN: Pretty likely to be more than it was two
4 years ago?

5 MS. STAPLETON: Likely to be more.

6 MR. ROSSMANN: As I understood you meant pen and ink
7 correction this afternoon that you presently can rely on --
8 you can rely on Metropolitan for only 320,000 acre-feet --

9 MS. STAPLETON: Yes.

10 MR. ROSSMANN: -- of preferential; is that right?

11 MS. STAPLETON: Preferential rights provide us
12 approximately 320,000 acre-feet of Met's existing supply.

13 MR. ROSSMANN: Your current use now is what,
14 approximately 450,000 acre-feet of Metropolitan?

15 MS. STAPLETON: Approximately 600,000.

16 MR. ROSSMANN: Of Metropolitan water?

17 MS. STAPLETON: Yes.

18 MR. ROSSMANN: So you are now using almost twice your
19 preferential right of Metropolitan's water?

20 MS. STAPLETON: Correct.

21 MR. ROSSMANN: Is it fair to say, then, that San Diego
22 is doing its share to contribute to California's exceeding
23 its 4.4 million acre-foot allotment?

24 MS. STAPLETON: Absolutely not.

25 MR. ROSSMANN: Let's back up a moment.

1 The preferential rights that you enjoy from
2 Metropolitan of 320,000 acre-feet, those flow from
3 Metropolitan's firm entitlement from the State Water Project
4 and the Colorado Aqueduct; is that correct?

5 MS. STAPLETON: As well as other supplies that they
6 have acquired separate and apart from those two sources.

7 MR. ROSSMANN: Well, maybe I should ask Mr. Underwood.
8 I thought I could say good night to you, sir, but I guess I
9 have to come back to you.

10 Of the 660,000 acre-feet that Ms. Stapleton says that
11 her Authority secures each year from you, how could you
12 break that down? What percentage of that would you
13 attribute to Colorado River water supplies, present Colorado
14 River water supplies?

15 MR. UNDERWOOD: Not knowing the deliveries, I don't
16 think I could right now. We have 2,000,000 plus demand, but
17 there is certain limitations, certain water goes certain
18 places. In other words, there is some restrictions on
19 moving water through the system. I can't tell you a certain
20 percentage. You just can't proportion it out.

21 MR. ROSSMANN: You have 2,000,000 acre-feet annually
22 right now and -- test my memory here -- you're relying on
23 about 1.2 million acre-feet from the State Water Project as
24 a reliable source?

25 MR. UNDERWOOD: We're relying on right now -- first of

1 all, the demand is about 2.1. You're taking 1.25 from the
2 Colorado River, under the surplus guidelines. You
3 subtracted the two and you have roughly 850,000 acre-feet
4 coming from the State Water Project, which is under normal
5 circumstances.

6 MR. ROSSMANN: Under present circumstances, and this
7 the reality of life, this is not meant to be a pejorative
8 question. Right now Metropolitan is taking more than its
9 share from the Colorado River if we enforce the Supreme
10 Court's decree both by quantity and priority?

11 MR. UNDERWOOD: No, because there is surplus guidelines
12 and there is surplus water available, and they have further
13 defined what constitutes a surplus. We are entitled to that
14 water. Secretary makes that declaration every year.

15 MR. ROSSMANN: So we are using that surplus now, but if
16 that is -- but that surplus is at some point going to
17 disappear, and the question is whether it is going to
18 disappear next year or hopefully 15 years from now; is that
19 correct?

20 MR. UNDERWOOD: The use of the additional or the use of
21 waters beyond what we are entitled to receive, yes.

22 MR. ROSSMANN: Well, I guess I -- people ask me to
23 confess this was all wrong and could we go home, and I hate
24 to disappoint, and I wasn't able to do that. But isn't it
25 fair that Imperial is agreeing right now to cap its use at

1 100 percent and no more of its entitlement from the Colorado
2 River under the Supreme Court's decree and the Seven Party
3 Agreement?

4 MR. UNDERWOOD: Repeat that.

5 MR. ROSSMANN: Isn't Imperial right now committing to
6 cap its use at 100 percent of its entitlement under the
7 Supreme Court's decree, Seven Party Agreement and the QSA?

8 MR. UNDERWOOD: Well, there is no quantification of
9 third parties. That is the whole purpose of the
10 Quantification Settlement. There is no division, absent at
11 QSA.

12 MR. ROSSMANN: If you go with the QSA, 3.1, they are
13 willing to -- if they live within the 3.1, they are going
14 to contribute to California's living within the 4.4?

15 MR. UNDERWOOD: Correct.

16 MR. ROSSMANN: So if San Diego can somehow reduce its
17 reliance on Metropolitan to come close to the 320,000 that
18 lie within its preferential share, San Diego will also
19 contribute to California's meeting 4.4?

20 MR. UNDERWOOD: Yes.

21 MR. ROSSMANN: The question is the alternative means of
22 getting to that result, the proposed transfer is one
23 alternative. But as we discussed last time, desalination
24 may be another means up to 50,000 acre-feet if we don't get
25 the transfer; is that correct?

1 I am asking Ms. Stapleton.

2 MS. STAPLETON: Its 50,000 acre-feet is actually being
3 looked at in addition to the water transfer.

4 MR. ROSSMANN: What about the potential for wastewater?

5 MS. STAPLETON: Water reclamation?

6 MR. ROSSMANN: Yes.

7 MS. STAPLETON: Yes. That we are also protecting an
8 increase in the use of our water reclamation in San Diego
9 County.

10 MR. ROSSMANN: Final question.

11 Would this all be a lot easier if the state Legislature
12 were to throw some money into the pot to help San Diego
13 reduce its draw on the Colorado River without fallowing in
14 the Imperial Valley?

15 MS. STAPLETON: I don't believe it would be any easier.
16 I have decided that this is going to be difficult no matter
17 what we do. But I would encourage the state at any given
18 time to give San Diego County Water Authority additional
19 money to implement any and all local projects.

20 MR. ROSSMANN: How about the state Legislature doing
21 that, if you will, to maintain the stability of the Salton
22 Sea?

23 MS. STAPLETON: That they would contribute to the
24 Salton Sea restoration efforts?

25 MR. ROSSMANN: That they would make it more lucrative

1 for San Diego to look at wastewater and desalination as
2 opposed to taking water from the Colorado River in order to
3 promote the long-term viability of the Salton Sea?

4 MS. STAPLETON: I think you have just a sheer numbers
5 problem of when you're talking to 200,000 acre-feet. I am
6 not certain through reclamation and through a 50,000
7 acre-foot desalination plant you could achieve that.

8 MR. ROSSMANN: Just leave you with one thought rather
9 than a question. This is what happened to Los Angeles in
10 the Mono Lake case.

11 Mr. Chairman, thank you very much.

12 No further questions.

13 CHAIRMAN BAGGETT: Thank you. I have a number of
14 questions, but it is late. I have one I would really
15 appreciate a copy I could read. I am struggling and I don't
16 know if I am reading literally between the lines or not,
17 and referring back to the Federal Register, previous
18 exhibit, I find it quite interesting.

19 I don't know how best to deal with this. I am half
20 thinking of preparing a series of questions and send it out
21 as interrogatories to this panel so they don't have to stay
22 tonight.

23 MR. SLATER: We are happy to respond to interrogatories
24 and I think we are happy to stay. Our flight isn't till ten
25 and change.

1 CHAIRMAN BAGGETT: We still have the problem with an
2 illegible piece of evidence. We are not promised the
3 follow-up letter, which I think will probably create a whole
4 other series of discussions once we all see that.

5 MR. OSIAS: At the risk of being novel, at least on the
6 subject of the letter, we are handicapped by not having both
7 and mine is black too. Perhaps testimony could come in over
8 the telephone. I assume they are primarily for Mr.
9 Underwood on this letter.

10 MR. SLATER: If you like a foundation or us to make him
11 available by telephone to answer questions, sure.

12 MR. OSIAS: On that subject, seeing the whites of his
13 eyes for me doesn't seem to be very critical.

14 CHAIRMAN BAGGETT: I would think that.

15 MR. OSIAS: Any other subject, if I might without
16 sounding like someone who gives you an apple during the
17 break, it's very helpful to hear the questions you ask,
18 either if you do redirect or recross. So we lose that
19 benefit when you do written interrogatories, the witnesses
20 are gone and there is no further.

21 CHAIRMAN BAGGETT: I would agree. I would prefer the
22 dialogue. Given this hour and given the fact that I think
23 something might be contained in this letter, the testimony
24 that this letter has generated, and the last -- just based
25 on today's testimony in general of this panel, this

1 afternoon and this evening.

2 MR. ROSSMANN: Your Honor, may I make --

3 CHAIRMAN BAGGETT: I am open for suggestions.

4 MR. ROSSMANN: This is so important. And I made every
5 effort I could to get the most legible copy and to introduce
6 it at the earliest opportunity because I thought it did bear
7 on all of your discussions here.

8 We have dates reserved next week. I know we would like
9 not to do that. I know that your Honor's wish is to
10 conclude tomorrow, but I think this is important enough for
11 us to come back one day next week.

12 CHAIRMAN BAGGETT: I am contemplating that.

13 MR. ROSSMANN: That would be my recommendation.

14 CHAIRMAN BAGGETT: As I recall the 6th was a
15 problematic day. Is the 7th? Or the 10th? We have the
16 10th reserved, that is a Monday. We have the 11th reserved,
17 that is a Tuesday.

18 MR. SLATER: As final alternative, Mr. Underwood is
19 happy to read this into the record.

20 CHAIRMAN BAGGETT: No, that is not acceptable. I want
21 to be able to sit and actually read it, contemplate it for a
22 minute or two.

23 MR. OSIAS: The 10th -- I have a personal commitment as
24 I mentioned once before on the 6th. I have three hearings
25 in court on the 7th. So the 10th is available.

1 MR. SLATER: The 10th will work.

2 CHAIRMAN BAGGETT: Let's firm that up tomorrow. Since
3 we have the panel here now, Andy, you have a couple
4 questions on fallowing specially which is technical
5 questions. Let's go to those questions, take a break. And
6 you have some redirect?

7 MR. SLATER: Very modest, maybe three questions max.
8 Let's just keep going.

9 ---oOo---

10 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

11 BY STAFF

12 MR. FECKO: Good evening. Again, there was a lot of
13 answers regarding fallowing. I am not sure who gave them,
14 so I will address this to the panel, and perhaps you can
15 work it out. Maybe.

16 I've heard some new terms today, and I am trying to get
17 them straight in my mind. ET fallowing. Let's go there for
18 a second. This is a situation where you would effectively
19 fallow a field, but still put enough water on the field to
20 provide, let's say, tailwater to Salton Sea; is that
21 correct?

22 MR. LEVY: The concept of ET fallowing is to take the
23 water which is currently lost to evapotranspiration by the
24 plants in the ground surface and transfer that, and to take
25 the water which flows as tailwater or tile water today to

1 the Salton Sea, and through various activities let's have
2 that water end up in the Salton Sea. And the reason I say
3 various activities is the Salton Sea has no contract or
4 water right for Colorado River water. So you can't just
5 take and run water into the Salton Sea. You have to put it
6 to reasonable and beneficial use.

7 MR. FECKO: So this form of ET fallowing is meant to
8 mitigate the impacts of the transferred water to the Salton
9 Sea and generate water for the transfers at the same time;
10 is that right?

11 MR. UNDERWOOD: Is to have a minimal impact on the Sea.
12 Provide for the transfer with a minimal impact on the Sea.

13 MR. FECKO: This kind of fallowing approach is
14 fundamentally different than the approach that is
15 contemplated in the Draft EIR/EIS; is that right?

16 MR. UNDERWOOD: Correct. That is what they were
17 referring to as direct fallowing, where you're taking all of
18 the water that would then be applied to the lands, including
19 the return flows and the evapotranspiration. All of it gets
20 transferred, so there is a decrease in the amount of water
21 that goes to the Sea.

22 MR. FECKO: And so to this point there has been no
23 environmental analysis of this form of fallowing? The
24 environmental impacts are fundamentally different of ET
25 fallowing than they are of direct fallowing; is that right?

1 MR. UNDERWOOD: Correct.

2 MR. LEVY: If I can clarify that. I think that you can
3 look at the environmental document that IID has put out and
4 see that you set certain worst case scenarios in there. In
5 direct of the fallowing options, the EIR presents the worst
6 case and that is direct water fallowing. But that
7 transitional, ET fallowing would be, I think, covered under
8 the EIR, but would be a subset which would have less impacts
9 than what is described in the document.

10 MR. FECKO: But as you testified, I think, the economic
11 impact would be --

12 MR. UNDERWOOD: You are trading environmental impact
13 for socioeconomic impacts.

14 MR. FECKO: Okay.

15 So, I guess, let's run through a hypothetical transfer
16 of 300,000 acre-feet and let's say we generate all that
17 water through ET fallowing. And I think we have assumed we
18 are rounding off numbers, a water duty of six acre-feet per
19 acre in IID and let's say ET makes up two-thirds of that,
20 four acre-feet per acre. Now we are sending two to the Sea,
21 transferring four, so that to my mind works out to 75,000
22 acres of ET fallowing to get there?

23 MR. LEVY: Yes.

24 MR. FECKO: This is all basically meant to get around
25 -- don't want to say get around -- work of the edges of the

1 law of river; is that right?

2 MR. LEVY: This is designed to comply with law of the
3 river, allow the transfer to take place, minimize the
4 impacts on the Salton Sea and address the third-party
5 impacts in Imperial Valley.

6 MR. FECKO: And the ET fallowing is a beneficial use
7 because why? How is it beneficial? How is a beneficial use
8 to simply -- how is it more beneficial -- let me ask it this
9 way: How is it more beneficial to simply send the water
10 across the land and into the Sea versus actually growing the
11 crop on the land and sending that same amount of water to
12 the Sea? You seem to be losing some benefit if you are not
13 producing the crop.

14 MR. LEVY: I think in terms of -- in my earlier
15 testimony I indicated that you would use that water in a
16 manner that improves the productivity of the land and would
17 result in a beneficial use. You cannot just dump water in
18 the Salton Sea. So you have to go through a process that is
19 going to put that water to a reasonable and beneficial use
20 before it can end up in the Sea.

21 MR. UNDERWOOD: Just make sure it is pursuant through a
22 contract and a contract purpose. So it is being
23 beneficially used within the context of a recognized use of
24 Colorado River water, contract use.

25 MR. FECKO: Excellent. Thank you.

1 CHAIRMAN BAGGETT: Redirect.

2 MR. SLATER: Unless people want to take a break.

3 ---oOo---

4 REDIRECT EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

5 BY MR. SLATER

6 MR. SLATER: Mr. Underwood, do you know how many
7 irrigated acres there are within the Palo Verde Irrigation
8 District?

9 MR. UNDERWOOD: Yes. There is 104,000 acres in the
10 valley that is eligible to receive water. Generally in a
11 year, taking out other lands that are non-irrigable, you end
12 up with between 90- and 95,000 acres irrigated.

13 MR. SLATER: Of these acres how many are eligible to
14 participate in the proposed PVID/MWD program?

15 MR. UNDERWOOD: All of them. All of the acres would be
16 eligible, but in terms of the program, the actual amount of
17 the acreage, the maximum would be 29 percent, which is
18 26,500.

19 MR. SLATER: A rough percentage of the total would be
20 what?

21 MR. UNDERWOOD: That is 29 percent of the total. And
22 if you take the minimum, the minimum in the program at any
23 one time would be 7 percent or 6,000 acres or 25,000
24 acre-feet.

25 MR. SLATER: Fair enough.

1 Mr. Underwood, were you involved in the QSA
2 negotiations?

3 MR. UNDERWOOD: Yes, I was.

4 MR. SLATER: Was the Secretary of Interior also
5 represented in those negotiations?

6 MR. UNDERWOOD: Yes, by Deputy Secretary of Interior.

7 MR. SLATER: Were there any other representatives of
8 the federal government?

9 MR. UNDERWOOD: Yes, the Bureau of Reclamation and the
10 Solicitor's office within Interior.

11 MR. SLATER: Did they also participate in the
12 negotiation and preparation of the Secretarial
13 Implementation Agreement?

14 MR. UNDERWOOD: Yes, they did.

15 MR. SLATER: And is it your understanding that the
16 Secretary of Interior expressed his concurrence and the
17 approach set forth in the Secretarial Implementation
18 Agreement?

19 MR. UNDERWOOD: Yes.

20 MR. SLATER: Is the U.S. Department of Fish and
21 Wildlife under the Secretary of Interior?

22 MR. UNDERWOOD: Yes, they are.

23 MR. SLATER: No further questions.

24 CHAIRMAN BAGGETT: Since we are under a role of
25 brevity here.

1 Mr. Osias.

2 MR. OSIAS: I am thinking about what he just asked.

3 ---oOo---

4 RE-CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

5 BY IMPERIAL IRRIGATION DISTRICT

6 BY MR. OSIAS

7 MR. OSIAS: Mr. Underwood, at the time the Secretary
8 participated in the negotiation of the implementation
9 agreement both the Secretary and Metropolitan and Imperial,
10 Coachella and San Diego and Mr. Hannigan all assumed that
11 water would be produced by improving the efficiency within
12 Imperial; isn't that correct?

13 MR. UNDERWOOD: Correct, for the San Diego/Imperial
14 transfer.

15 MR. OSIAS: And even with respect to the QSA transfers
16 that IID would make other than to San Diego, the Secretary
17 Implementation Agreement talks about IID's major
18 conservation efforts, and there is even language about the
19 safe harbor from reasonable and beneficial use having a
20 subject to no significant advances in efficiency technology,
21 and those sort of things because IID was expected to sort of
22 stay at the cutting edge of efficiency?

23 MR. UNDERWOOD: Correct.

24 MR. OSIAS: It's not correct that the implementation
25 agreement contemplated under its current words following as

1 the means of producing conserved water?

2 MR. SLATER: Objection. That is beyond the scope of
3 redirect.

4 MR. OSIAS: Well, I think we got to the Secretary being
5 there and negotiating the implementation agreement. I guess
6 the question is why is that relevant?

7 CHAIRMAN BAGGETT: I overrule. Called redirect because
8 he was involved with the Secretary of Interior, negotiating.

9 MR. OSIAS: I am trying to get to the bottom line of
10 why he was there.

11 What were you thinking of then? Maybe thinking new
12 today.

13 MR. UNDERWOOD: Ask the question again.

14 MR. OSIAS: If the Secretary Implementation Agreement,
15 which is the document he would sign, provided for Imperial
16 to have a reasonable and beneficial use protection under the
17 assumption that it was doing efficiency improvement both to
18 get started and would have to sort of keep up with that?

19 MR. UNDERWOOD: Correct.

20 MR. OSIAS: It did not contemplate back when it was
21 negotiated water being produced by fallowing?

22 MR. UNDERWOOD: Under the QSA provides --

23 MR. OSIAS: I'm talking more about the Secretary's
24 agreement.

25 MR. UNDERWOOD: But the Secretary is to implement in

1 accordance with the QSA and water the acquisitions.

2 MR. OSIAS: So maybe the distinction is the Secretary
3 under the Implementation Agreement wasn't going to refuse to
4 transfer water that might have been created under the QSA by
5 following?

6 MR. UNDERWOOD: Correct.

7 MR. OSIAS: He wasn't going to give a reasonable and
8 beneficial use safe harbor without materially conservation
9 efforts for this period of 20 years and an eye on major
10 advances in technology relating to efficiency?

11 MR. UNDERWOOD: I don't think at that time that they
12 were contemplating that much being done by following even
13 though it was provided for in the QSA.

14 MR. OSIAS: There is a difference between letting a
15 transfer happen and giving someone a reasonable and
16 beneficial use safe harbor?

17 MR. UNDERWOOD: The concern for the agency, the reason
18 the Secretary did that was because of what you just pointed
19 out, the concerns that for reasonable and beneficial use
20 challenges, so there was precise language dealing with those
21 transfers and for the provisions that you talked were
22 improvements in technology, et cetera.

23 MR. OSIAS: Thank you.

24 CHAIRMAN BAGGETT: Thank you.

25 Salton Sea Authority.

1 MR. KIRK: Waive.

2 CHAIRMAN BAGGETT: PCL.

3 MS. DOUGLAS: Nothing.

4 CHAIRMAN BAGGETT: Sierra Club.

5 Audubon.

6 National Wildlife.

7 Defenders.

8 Down to the County.

9 MR. ROSSMANN: Yes, sir. Two questions.

10 ----oOo----

11 RE-CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

12 BY COUNTY OF IMPERIAL

13 BY MR. ROSSMANN

14 MR. ROSSMANN: Who was -- what agencies were
15 represented in the QSA negotiations, Mr. Underwood?

16 MR. UNDERWOOD: The four agencies; Imperial Irrigation
17 District, Coachella Valley Water District, Metropolitan
18 Water District, San Diego County Water Authority, the
19 Department of Interior with a number of agencies within the
20 Department of Interior and the Department of Water
21 Resources, California Department of Water Resources.

22 MR. ROSSMANN: San Diego was invited to the party even
23 though they are not a signatory to the agreement?

24 MR. UNDERWOOD: Correct.

25 MR. ROSSMANN: Imperial County was not represented in

1 those negotiations; is that correct?

2 MR. UNDERWOOD: Only Imperial Irrigation District.

3 MR. ROSSMANN: But Imperial County is a separate
4 entity and was not invited to those negotiations?

5 MR. UNDERWOOD: No. They don't hold water rights to
6 the Colorado River.

7 MR. ROSSMANN: Does San Diego County Water Authority
8 hold water rights to the Colorado River?

9 MS. STAPLETON: We are a fifth priority in the Colorado
10 River, what is it, the compact.

11 MR. LEVY: The Seven Party Agreement.

12 MS. STAPLETON: The County and City of San Diego has
13 112,000 acre-feet, and that we sit on the Colorado River
14 Board of California as a result of that because we are fifth
15 priority.

16 MR. UNDERWOOD: That was merged with Metropolitan's,
17 but it is in terms of the Colorado River Board, the
18 representation is there.

19 MR. ROSSMANN: They sit on the Colorado River Board,
20 but they no longer hold that priority because now
21 Metropolitan holds that priority?

22 MS. STAPLETON: As part of our agreement when we joined
23 Metropolitan, we have -- they have the rights to take that
24 water and utilize it and it is merged into theirs. However,
25 we did not give up status for the purposes of the State of

1 California on the Colorado River Board or in Colorado River
2 matters within the state.

3 MR. ROSSMANN: That wasn't good enough to let them let
4 you sign the QSA?

5 MS. STAPLETON: Because we do not have a direct
6 contract with the federal government. The four parties
7 determined who was the best signatory to it. If you note on
8 the QSA San Diego County Water Authority nor the federal
9 government are signatories nor the state government are
10 signatories to the QSA.

11 MR. ROSSMANN: Thank you very much.

12 CHAIRMAN BAGGETT: Farm Bureau.

13 MR. RODEGERDTS: No.

14 CHAIRMAN BAGGETT: Mr. Du Bois.

15 MR. DU BOIS: No.

16 CHAIRMAN BAGGETT: Mr. Gilbert.

17 MR. GILBERT: Nothing.

18 CHAIRMAN BAGGETT: Staff. Andy, Dana.

19 This concludes a very long day. I think at this point
20 let's reserve the 10th at 10:00. So you can come up that
21 morning, that I assume is easier, and we will determine by
22 tomorrow if that is necessary. I want to think this through
23 a little bit. There has been a lot here. I assume in the
24 morning we will have those letters, legible copies of those
25 letters.

1 MR. ROSSMANN: I would conditionally offer Imperial 5
2 into evidence subject it being replaced by a better copy.
3 But I believe Mr. Underwood did authenticate it. I believe
4 we also have the San Diego exhibits to which we have no
5 objection, except No. 59, I believe.

6 Is that correct?

7 MR. SLATER: That is correct.

8 CHAIRMAN BAGGETT: San Diego has other exhibits they
9 want to get in?

10 MR. SLATER: Yes. We move the balance of our exhibits
11 into the record with the exception of 59 which was subject
12 to the objection lodged by both Imperial Irrigation District
13 and County of Imperial.

14 MR. OSIAS: I have no objection to that, what the two
15 gentlemen said.

16 CHAIRMAN BAGGETT: They are taken into evidence.

17 MR. OSIAS: I was just reminded, though, by Mr. Carter
18 here that there is -- the 10th is also a problem for me, but
19 if those are the three days that are available --

20 CHAIRMAN BAGGETT: We have the 10th and the 11th
21 reserved, as I recall.

22 MR. OSIAS: Maybe, depending on the scope of that day,
23 Mr. Hattam could. I am not sure about this problem. I know
24 the other two days are definitely out.

25 CHAIRMAN BAGGETT: We will decide by the end of

1 tomorrow.

2 MR. OSIAS: What I would not want to miss, if you are
3 giving us five or ten minutes closing orally, I would
4 definitely want to be here for that portion.

5 CHAIRMAN BAGGETT: We can go off the record.

6 (Hearing adjourned at 8:45 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. SCHWARTZ, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 2403 through 2747 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 12th day of June 2002.

ESTHER F. SCHWARTZ
CSR NO. 1564

