

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).

MONDAY, JULY 8, 2002  
10:00 A.M.

CAL EPA BUILDING  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

REPORTED BY:

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CSR 1564

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SACRAMENTO, CALIFORNIA

MONDAY, JULY 8, 2002, 10:00 A.M.

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CHAIRMAN BAGGETT: We will resume the petition by Imperial Irrigation District and San Diego County Water Authority for approval of long-term transfer of conserved water. We are back for witnesses as we discussed at the end of our last session.

Mr. Osias, you're up.

MR. OSIAS: Thank you.

Mr. Chairman, Director, staff, we had talked at the conclusion of the last hearing that if there were any specific subareas that any other party wished to have a witness attend that they should send some sort of notice that that was their request because we took a little bit of chiding that we brought only three or four the first time around.

We received no communications of any kind regarding any areas. So we have brought six, hoping that that would cover what the people were interested in. And we made a good faith effort to try to identify that from the comments. We have with us -- I will talk about the areas and then I will introduce the witnesses. We have the project manager. We have the area or the subject area of air, resources, the Habitat Conservation Plan and biology, socioeconomic

1 impacts, hydrology and selenium mitigation. We have  
2 principal authors or participants in the EIR process from  
3 CH2MHill on each of those subjects.

4 If I might, then, start with who they are. Starting in  
5 the center, you may recall Ms. Laura Harnish who's the  
6 project manager. Her Curriculum Vitae had been introduced  
7 before. She testified both as a rebuttal witness and in  
8 Phase II as an IID witness.

9 Dr. Dickey to her right who also testified in rebuttal  
10 and his Curriculum Vitae was submitted at that time.

11 Dr. Eckhardt, to Dr. Dickey's right, who also had  
12 testified before and his Curriculum Vitae had previously  
13 been submitted.

14 The new witnesses are Dr. Miller to Dr. Eckhardt's  
15 right, at the far end here, who I will ask to summarize his  
16 background in a moment, and education, but he is the  
17 selenium mitigation witness.

18 To Ms. Harnish's left, David Christophel, who is a  
19 biologist and participated in the HCP development.

20 And to Mr. Christophel's left is Mr. Highstreet who is  
21 an ag economist and who developed, in large part, the  
22 socioeconomic portion of Final EIR/EIS.

23 The purpose of the -- I thought I would have them  
24 introduce their backgrounds as they summarized any changes  
25 in their sections, if that is okay --

1           CHAIRMAN BAGGETT: That is fine.

2           MR. OSIAS: -- rather than doing it in the row.

3           The purpose of this panel, as we understood the Board's  
4           desire as expressed in the June 14th communication, is to  
5           have them probably be available to both summarize, although  
6           that is not easy to do a very large document, and to also  
7           respond to questions regarding changes between the Draft  
8           EIR/EIS and the Final. As the Board probably knows at least  
9           from news accounts the Final EIR/EIS was certified by IID  
10          and by San Diego. Actually, I take that back, by IID who is  
11          the lead agent and by the Bureau that is going through the  
12          federal process which is slower.

13          Let me start, if I could, then, with Ms. Harnish who  
14          can describe for us how the EIR, the Final EIR, is  
15          incorporated, what its parts are, what other documents  
16          incorporated by reference.

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18           DIRECT EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

19   BY MR. OSIAS

20          MS. HARNISH: We are going to put the Table of Contents  
21          up just as a guide.

22          For starters the entire Environmental Impact  
23          Report/Environmental Impact Statement consists of both the  
24          two volumes that were the Draft EIR/EIS and then these two  
25          volumes that are the Final EIR/EIS, all of those four

1 together constitute the entire EIR/EIS.

2 In addition, we have incorporated three documents by  
3 reference, and that is the EIS on the Implementation  
4 Agreement and Inadvertent Overrun and Payback Policy  
5 prepared by the Bureau, and the programmatic EIR on the QAS  
6 and the biological opinion on the -- for the Interim Surplus  
7 Criteria. Those three documents are also incorporated by  
8 reference.

9 This Final EIR was prepared in response to comments  
10 received. It includes several sections. The first is the  
11 introduction which includes an overview, summarizes the  
12 organization of the entire document.

13 The second section is a list of all the commenters that  
14 submitted comments. I am sure you are aware we received  
15 quite a few, over 1700. And anyone who submitted a comment  
16 is listed in that section.

17 Section 3 consists of Master responses that were  
18 prepared, and these were prepared to provide comprehensive  
19 responses to the subject areas where we received a number of  
20 similar comments. So rather than doing a lot of repeating,  
21 we felt -- and for the types of concerns that needed a more  
22 thorough response we prepared these, and there is a series  
23 of 23 of them, and they are all included in Section 3.

24 Section 4 includes the Errata. These are the actual  
25 textual changes made to the Draft EIR/EIS and also figure

1 changes. These are primarily responses to comments and  
2 reflect actually changes to text. While it seems -- it is  
3 not very thick compared to the entire document, but the  
4 actual changes are in red line strike out. We included  
5 context around the areas where actual changes occurred. So  
6 the changes aren't necessarily as extensive as it may appear  
7 by the size of the section.

8 The next section is Section 5 which is the actual  
9 response to each of the comments received. So the  
10 individual, all of the individual letters that were received  
11 are reproduced here with the responses right next to it. In  
12 many cases it includes a referral back to the Master  
13 Response.

14 Section 6 is references, and, of course, the  
15 attachments.

16 MR. OSIAS: Maybe as the highest level overview could  
17 you tell us what changed, if anything, between the Draft  
18 EIR/EIS and the Final?

19 MS. HARNISH: It is a big document and so -- but the  
20 changes are really limited to the elimination of the HCP  
21 Approach 1, which was included in the Draft EIR/EIS and the  
22 addition of an air quality mitigation plan related to the  
23 exposure of soils at the Salton Sea.

24 MR. OSIAS: Those textual changes again are in the  
25 Section 4.0, called the Errata?

1 MS. HARNISH: That's correct.

2 MR. OSIAS: Within the Errata how would one find how  
3 the draft changed?

4 MS. HARNISH: The Errata is organized to match the  
5 organization of the Draft EIR/EIS. So section changes in --  
6 changes in Section 3.14, for example, of the Draft EIR/EIS  
7 are listed in 3.1. It is in order that they appeared in the  
8 Draft EIR/EIS.

9 MR. OSIAS: So it's sequential by section number,  
10 corresponding to the Draft EIR/EIS section numbers?

11 MS. HARNISH: That's correct.

12 MR. OSIAS: So I think -- I am sorry, the two changes  
13 as an overview were with respect to elimination of HCP1 and  
14 the change to the air resource mitigation?

15 MS. HARNISH: Right. The addition of a -- we had  
16 previously had no mitigation for the significant unavoidable  
17 impact of potential dust for the exposed soils. And we,  
18 since in response to comments and in much consultation, have  
19 developed a mitigation plan for that impact.

20 MR. OSIAS: If I might then turn to Mr. Christophel who  
21 was involved in the HCP process, and let's deal with that  
22 change first.

23 Could you summarize for us how the HCP in the Final  
24 EIR/EIS is different from the HCP or HCP choices in the  
25 draft?

1           MR. CHRISTOPHEL: I can do that. Would you like me to  
2 summarize my qualifications first?

3           CHAIRMAN BAGGETT: We haven't sworn all your witnesses.

4           MR. OSIAS: You're right.

5                     (Oath administered by Chairman Baggett.)

6           MR. OSIAS: Mr. Christophel, so eager to hear your  
7 explanation, but give us your background first.

8           MR. CHRISTOPHEL: I have a Bachelor's and Master's  
9 degree in biological sciences from California State  
10 University in Sacramento. I have been an environmental  
11 consultant for over 17 years. During that course and  
12 particularly over the last several years, my focus has been  
13 on endangered species management and habitat management in  
14 general. As was previously indicated, I was part of the  
15 team that developed the Habitat Conservation Plan.

16           MR. OSIAS: How long have you worked on the IID EIR/EIS?

17           MR. CHRISTOPHEL: In combination with the HCP, and  
18 again my focus was on the HCP, but it's been over two  
19 years.

20           MR. OSIAS: Would you then describe for us how the  
21 Final EIR/EIS is different than the Draft with respect to  
22 the HCP?

23           MR. CHRISTOPHEL: Well, the primary change, which has  
24 already been mentioned in the HCP, was the manner in which  
25 the impacts to the Salton Sea were addressed. As Ms.

1 Harnish indicated, originally the Draft HCP included two  
2 approaches. The first included a pond consent that was  
3 intended to provide habitat and forage base for the species  
4 that we were trying to address. In this case the HCP  
5 addressed those covered species, those being, in this case,  
6 those that rely on fish for their survival.

7 MR. OSIAS: Let me just interrupt you for one minute.  
8 You're addressing the portion of the HCP that deals with the  
9 Salton Sea; is that right?

10 MR. CHRISTOPHEL: That's correct.

11 MR. OSIAS: Was there any change to the HCP relating to  
12 resource areas other than the Salton Sea?

13 MR. CHRISTOPHEL: There were no substantive changes.  
14 There were some refinements and some to clarifications that  
15 was provided, and that was developed in coordination with  
16 the Fish and Wildlife Service and Fish and Game.

17 MR. OSIAS: Go back, then, to the Salton Sea portion.

18 MR. CHRISTOPHEL: Since the release of the draft  
19 document, we continued to work with the Fish and Wildlife  
20 Service and Fish and Game to try to develop an approach that  
21 would be successful. Given a number of considerations,  
22 ultimately Fish and Wildlife Service and Fish and Game came  
23 to the conclusion that because of the uncertainty associated  
24 with the long-term or potential for long-term success of the  
25 pond approach, they felt that there was sufficient

1       uncertainty that they could not issue a permit.

2               Based on that, then, we turned to what was formerly  
3 referred to as Approach 2, and there were also some  
4 modifications to that approach. Again, what we were  
5 focusing on was how to maintain fish production at the Sea  
6 to correspond to what would be expected under the baseline.

7               The projections that we have and also depending or  
8 according to what we anticipate the salinity tolerance for  
9 the fish that those birds rely on, we identified a salinity  
10 tolerance or threshold of 60 parts per thousand as the basis  
11 for the mitigation. So under the baseline, it was you  
12 anticipated that fish would disappear by about 2030. That  
13 was based on the model projections.

14              In order to maintain that level of mitigation, what we  
15 decided to do was to mitigate by offsetting the reductions  
16 in inflow to correspond to that period of time. Now there  
17 were two sorts or types of uncertainties that we are  
18 addressing. One was the time that that threshold would be  
19 met, in other words, when in the future would 60 parts per  
20 thousand be met. And we dealt with that through the  
21 modeling process which assigned the very probability for  
22 achieving that. As I mentioned previous, the mean of model  
23 approaches suggested that 60 parts per thousand threshold  
24 would be reached in 2023.

25              MR. OSIAS: What do you mean by "mean"?

1           MR. CHRISTOPHEL: Of the projections that were made and  
2 of that distribution the mean suggested that 60 parts per  
3 thousand would be met in 2023. If you look at the 90  
4 percent confidence bounds, it could occur as early as 2018  
5 or on the other end 2030.

6           MR. OSIAS: Why don't we stop there for a minute so we  
7 can reference a page.

8           Do you have Page 3-37?

9           MR. CHRISTOPHEL: Yes.

10          MR. OSIAS: You see there is a picture there and it has  
11 a solid line sort of in the middle projecting from the lower  
12 left to the upper right and then a line on either side, one  
13 designated by triangles and the other by diamonds.

14          You see that?

15          MR. CHRISTOPHEL: Yes, I do.

16          MR. OSIAS: Is the solid line the mean that you were  
17 talking about?

18          MR. CHRISTOPHEL: That's correct.

19          MR. OSIAS: If we look to the horizontal axis, I guess  
20 2023 is where you see that solid line cross the 60 parts per  
21 thousand vertical; is that right?

22          MR. CHRISTOPHEL: That's correct.

23          MR. OSIAS: The outside bounds are what, 2018 to 2030?

24          MR. CHRISTOPHEL: Also correct.

25          MR. OSIAS: Are those -- what does it mean to have a 95

1 or 90 percent confidence factor here for this? Do you know?

2 MR. CHRISTOPHEL: What this is indicating is that the  
3 60 part per thousand threshold, there is a 90 percent  
4 confidence that it will occur within those bounds.

5 MS. OSIAS: Between 2018 and 2030?

6 MR. CHRISTOPHEL: That's correct.

7 MR. OSIAS: Equally likely at either end?

8 MR. CHRISTOPHEL: It's probably equally likely on  
9 either end, but it's most likely near the mean.

10 MR. OSIAS: So, you used these projections -- by the  
11 way, when you say you used them, did you use them with Fish  
12 and Wildlife Service?

13 MR. CHRISTOPHEL: Yes. They were aware of those.

14 MR. OSIAS: The HCP was negotiated with them; is that  
15 correct?

16 MR. CHRISTOPHEL: That's correct.

17 MR. OSIAS: Going on. How did it evolve into what we  
18 currently have in the final?

19 MR. CHRISTOPHEL: Again, dealing with that first type  
20 of uncertainty which is when the threshold would be reached,  
21 it suggested that it would be reached in 2023. Now the  
22 second type of uncertainty that we had was the actual  
23 threshold itself. By that I mean is 60 parts per thousand  
24 the actual threshold at which tilapia, in this case, would  
25 disappear or start to disappear from the Sea.

1           Based on the available information and the professional  
2           opinion of those that are most familiar with that species in  
3           the Sea, the 60 parts per thousand threshold makes the most  
4           sense. However, we do acknowledge that there is uncertainty  
5           associated with that. That it is a complex environment and  
6           that that could occur earlier or it could occur later.

7           To account for that uncertainty what we did then was  
8           rather than agree to mitigate out to the year 2030, we took  
9           a more conservative approach and agreed to mitigate by  
10          adding water to the Sea out to the year 2030.

11          MR. OSIAS: You said 2030 twice. Did you mean rather  
12          than go to 2023?

13          MR. CHRISTOPHEL: That's correct.

14          MR. OSIAS: You'd do it out to 2030?

15          MR. CHRISTOPHEL: Yes. If I said that, I misspoke.

16          MR. OSIAS: The numbers weren't matching, so I didn't  
17          quite understand.

18          Let's step back from the detail one minute. The Draft  
19          had two HCP approaches. The final has a one.

20          Correct?

21          MR. CHRISTOPHEL: Correct.

22          MR. OSIAS: The premise of the one that is left is to  
23          mitigate Salton Sea impacts with water put into the Sea; is  
24          that correct?

25          MR. CHRISTOPHEL: That's correct.

1           MR. OSIAS: The other one, which you described is a  
2 pond and a hatchery, is no longer in the document?

3           MR. CHRISTOPHEL: That's correct.

4           MR. OSIAS: Could you give us just very briefly why the  
5 decision was made to drop it since that is a change?

6           MR. CHRISTOPHEL: Again, it was based on conversations  
7 and discussions with Fish and Wildlife Service and Fish and  
8 Game. And as I mentioned, they felt that there was  
9 sufficient uncertainty regarding the ultimate success of  
10 that approach that they couldn't permit it.

11          MR. OSIAS: Permit from them is necessary?

12          MR. CHRISTOPHEL: For the HCP, yes. The intent of the  
13 HCP is to receive an incidental take permit.

14          MR. OSIAS: With that information from them, the focus  
15 shifted to just refining the remaining HCP approach; is that  
16 right?

17          MR. CHRISTOPHEL: That's correct. It became more of an  
18 avoidance approach as to a mitigation approach.

19          MR. OSIAS: Under the HCP, the only one in the Final,  
20 besides mitigating out to 2030, how do you determine how  
21 much water is needed to go into the Sea?

22          MR. CHRISTOPHEL: That will be based on a calculation  
23 that looks at the amount of reduction in inflow, but it will  
24 also look at salinity in the Sea.

25          MR. OSIAS: Maybe you could just explain in a little

1 more detail how those two factors influence it.

2 MR. CHRISTOPHEL: The objective is to maintain a  
3 salinity in the Sea at or below 60 parts per thousand until  
4 the year 2030. Therefore, what we are trying to accomplish  
5 is making sure that that occurs, so it not only includes the  
6 reduction in inflow, but it also requires an element that  
7 looks at the salinity itself.

8 MR. OSIAS: Are there any other events within the HCP  
9 that could change how long you mitigate for?

10 MR. CHRISTOPHEL: Yes. Again, the intent is to  
11 mitigate the impact on birds that rely on fish. So if fish  
12 in the Sea disappear prior to 2030, therefore, no further  
13 obligation to maintain conditions for those birds. And if a  
14 Salton Sea restoration project were to be implemented that  
15 no longer require the mitigation, that would also be a  
16 reason for discontinuing the water to the Sea.

17 MR. OSIAS: Where will the -- does the HCP say where  
18 the water for mitigation will come from?

19 MR. CHRISTOPHEL: No, it does not.

20 MR. OSIAS: Does it assess at least one source of water  
21 for the HCP?

22 MR. CHRISTOPHEL: Yes, it does look at if that water  
23 source was through additional fallowing.

24 MR. OSIAS: What does the HCP permit and what does it  
25 actually assess for purposes of environmental review?

1 MR. CHRISTOPHEL: Restate that.

2 MR. OSIAS: Does the HCP require that the mitigation  
3 water come from any source?

4 MR. CHRISTOPHEL: No, it does not.

5 MR. OSIAS: But it only reviews from an environmental  
6 review perspective one source; is that right?

7 MR. CHRISTOPHEL: That's correct.

8 MR. OSIAS: What source is that?

9 MR. CHRISTOPHEL: That is through fallowing.

10 MR. OSIAS: What do we mean when we say that is through  
11 fallowing? What happens to cause water to go into the Sea  
12 from fallowing?

13 MR. CHRISTOPHEL: That is to stop farming a piece of  
14 ground and allowing that water to make its way to the Sea.

15 MR. OSIAS: For purposes of mitigating the impact of  
16 the transfer water?

17 MR. CHRISTOPHEL: That's correct.

18 MR. OSIAS: Any other change in the HCP that is a  
19 relatively important level that you want to summarize?

20 MR. CHRISTOPHEL: Again, I think that the most  
21 substantive was the change in the mitigation approach for  
22 Salton Sea. The others were more refinements that don't  
23 really influence or did not influence the conclusions of the  
24 environmental documents.

25 MR. OSIAS: If you mitigate flow -- if you mitigate

1 under the HCP approach, does the Final EIR/EIS identify how  
2 the elevation of the Sea would be different through 2030  
3 compared to the baseline?

4 MR. CHRISTOPHEL: I believe it does, and I may defer  
5 that to --

6 MR. OSIAS: That is not something that the HCP focused  
7 on? That was a hydrology question?

8 MR. CHRISTOPHEL: Maybe I misunderstood your question.

9 MR. OSIAS: I'm just trying to do a comparison,  
10 baseline to mitigation through the HCP through 2030 while  
11 it is in effect. What does the Sea look like in the  
12 baseline versus if you mitigate with the HCP?

13 MR. CHRISTOPHEL: With regard to water surface  
14 elevation?

15 MR. OSIAS: Yes.

16 MR. CHRISTOPHEL: Under the revised HCP approach, the  
17 water surface elevations would be maintained or probably  
18 higher than under the baseline.

19 MR. OSIAS: In no event would the elevation be below  
20 than what the baseline conditions would be?

21 MR. CHRISTOPHEL: I don't believe so, no.

22 MS. OSIAS: Through 2030?

23 MR. CHRISTOPHEL: That's correct.

24 MR. OSIAS: What happens after 2030, or these other  
25 events if they should happen first?

1           MR. CHRISTOPHEL: Then water to the Sea would be  
2 discontinued.

3           MR. OSIAS: You'd just stop?

4           MR. CHRISTOPHEL: That's correct.

5           MR. OSIAS: The reason you stop?

6           MR. CHRISTOPHEL: Again, the intent of the mitigation  
7 is to maintain those birds that rely on fish. And if the  
8 fish are no longer there, then that mitigation is no longer  
9 required.

10          MR. OSIAS: What if you did such a good job of  
11 mitigating them that they were still there in 2030?

12          MR. CHRISTOPHEL: Well, I suspect they could be there  
13 in 2030.

14          MR. OSIAS: Would you still stop?

15          MR. CHRISTOPHEL: Yes.

16          MR. OSIAS: The reason?

17          MR. CHRISTOPHEL: We are looking at this, the impact is  
18 the difference between the project and the baseline. And at  
19 that point there would be no difference between what would  
20 happen under the baseline and what would happen under the  
21 project.

22          MS. OSIAS: Thank you.

23           If I might now turn to the second area that changed.

24           Dr. Dickey, you were here before. In fact, I think you  
25 testified during the rebuttal phase of Phase II.

1           Is that correct?

2           DR. DICKEY: That's correct.

3           MR. OSIAS: At that time you testified, I believe, on  
4 how the EIR/EIS would change with respect to air impacts; is  
5 that right?

6           DR. DICKEY: Right.

7           MR. OSIAS: Did it, in fact, change like you testified?

8           DR. DICKEY: Indeed, the change is consistent with that  
9 testimony.

10          MR. OSIAS: Rather than repeat it all, then, maybe you  
11 could briefly summarize what the Final EIR/EIS provides with  
12 respect to air and how that is different from the draft.

13          DR. DICKEY: The primary change that we reviewed at  
14 that time and that appeared in the Final is embodied in the  
15 Master Response on air quality monitoring and mitigation.  
16 It provides a monitoring and mitigation plan that is phased,  
17 if you will, beginning with some measures that would prevent  
18 the increases in emissions from exposed sediments when  
19 sediments might become exposed after 2035, I believe. And  
20 moving into a research and monitoring program, it would  
21 identify areas where there are increased emissions, should  
22 they occur, and would also develop mitigation appropriate to  
23 that specific environment.

24          There is also Air Pollution Credit Trading Program that  
25 is proposed. And, in fact, the mechanism exists that the

1       only proposal is that we develop it, that the IID would  
2       develop it, for purposes of offsetting emissions from the  
3       exposed sediments, should those emissions occur. And then  
4       lastly, implementation, should it be proved necessary  
5       implementation of dust mitigation measures developed in the  
6       research and development program to mitigate detected  
7       significant emissions.

8               MR. OSIAS: Now, as best you can recall, were you  
9       cross-examined when you testified before?

10              DR. DICKEY: I clearly recall being cross-examined.

11              MS. OSIAS: Do you remember for about how long?

12              DR. DICKEY: It was in excess of five individual  
13       questioners, and I think it was a goodly part of a day, in  
14       any case.

15              MR. OSIAS: Is the Final EIR/EIS different in any  
16       material way from the testimony you have already provided  
17       about what it would say?

18              DR. DICKEY: No.

19              MR. OSIAS: Turning now perhaps to the other witnesses.

20              Mr. Highstreet, could you give us a brief synopsis of  
21       your background?

22              MR. HIGHSTREET: My background is educationally I got a  
23       Bachelor of Science from Cal Poly, San Luis Obispo, in  
24       agricultural management in 1976. In '77 I got a Master's in  
25       agriculture economics from U.C. Davis. For two years after

1 Davis I worked for U.C. Cooperative Extension Service. And  
2 for 23 since then I have worked for CH2MHill.

3 MR. OSIAS: You participated -- did you participate in  
4 both the -- did you participate in the preparation of the  
5 Draft EIR/EIS?

6 MR. HIGHSTREET: Yes.

7 MR. OSIAS: And is the Final EIR/EIS different or was  
8 there a change with respect to the assessment of  
9 socioeconomic impacts as compared to the Draft?

10 MR. HIGHSTREET: There are no changes, per se, other  
11 than highlighting the new HCP. Other than that, in the  
12 Master Responses we clarified a couple points, one on the  
13 crop type assumptions used in the fallowing and added some  
14 clarification in fiscal impacts and property values.

15 MR. OSIAS: So the assessment itself did not change; is  
16 that right?

17 MR. HIGHSTREET: No.

18 MR. OSIAS: You participated in the Master Response to  
19 comments?

20 MR. HIGHSTREET: Correct.

21 MR. OSIAS: Dr. Eckhardt, you have testified here  
22 before, correct?

23 DR. ECKHARDT: That's correct.

24 MR. OSIAS: Do you recall being cross-examined?

25 DR. ECKHARDT: Yes, I do.

1           MR. OSIAS: Do you recall how long you were  
2 cross-examined for?

3           DR. ECKHARDT: I think it was almost a day and a half,  
4 two days.

5           MR. OSIAS: Your role in the EIR/EIS was with respect  
6 to what, hydrology?

7           DR. ECKHARDT: Hydrology and hydrologic modeling.

8           MR. OSIAS: You participated in the Draft, right?

9           DR. ECKHARDT: Correct.

10          MR. OSIAS: In the Final, at least with respect to the  
11 issue that you were extensively cross-examined on, that is  
12 the subject of the baseline hydrology for the Salton Sea, is  
13 there any change in the Final with respect to the baseline?

14          DR. ECKHARDT: There is not.

15          MR. OSIAS: Did you participate in the preparation of  
16 the Master Response regarding the baseline?

17          DR. ECKHARDT: Yes, I did.

18          MR. OSIAS: Since there was no change, what is the  
19 focus of the Master Response?

20          DR. ECKHARDT: The focus of the Master Response is to  
21 try to clarify the assumptions that were made in deriving  
22 that baseline. And as a result, we used further analysis  
23 which we termed sensitivity analysis to all those  
24 assumptions.

25          MR. OSIAS: Was that for testing the reasonableness of

1 those assumptions?

2 DR. ECKHARDT: That's correct.

3 MR. OSIAS: After doing that there was no change to the  
4 proposed baseline?

5 DR. ECKHARDT: That's correct, no change.

6 MR. OSIAS: Dr. Miller, could you give us your  
7 educational and work experience?

8 DR. MILLER: Yes. My Bachelor's degree is in English  
9 literature, 1973, University of North Carolina. My Master's  
10 degree is in irrigation engineering from Utah State  
11 University, 1987. My Ph.D. is in agricultural engineering  
12 with a specialty in drainage at North Carolina State  
13 University.

14 MR. OSIAS: Have you read a really good drainage book?

15 DR. MILLER: There are many gripping books.

16 With respect to work experience, while working on my  
17 Doctorate and then after completing the Doctorate I worked  
18 with North Carolina State University Water Quality division  
19 with USDA contracts and water quality issues.

20 I then worked for nearly ten years with Montgomery  
21 Watson Harza Engineering as an irrigation, drainage, water  
22 quality engineer, and then for the past four years I have  
23 worked as an irrigation, water quality engineer with Davids  
24 Engineering Company.

25 MR. OSIAS: What was your role with respect to the

1 EIR/EIS?

2 DR. MILLER: My role with respect to the EIR/EIS was  
3 water quality modeling. And so basically helping set up the  
4 model runs to predict the impacts of the baseline and  
5 program alternatives with respect to water quality.

6 MR. OSIAS: Did you also have a role in the program for  
7 selenium mitigation?

8 DR. MILLER: Yes, I did. I did the review there.

9 MR. OSIAS: Could you explain your role there?

10 DR. MILLER: My role there basically was to examine  
11 selenium mitigation strategies that have been tested in  
12 other locations and to determine whether the results of  
13 these trials would enable us to, with confidence, suggest  
14 that they could be used as mitigation strategies at IID for  
15 this program.

16 MR. OSIAS: The Draft EIR/EIS had a selenium mitigation  
17 program in it; is that right?

18 DR. MILLER: No, it did not. It said that it was  
19 unmitigable.

20 MR. OSIAS: What does the Final say?

21 DR. MILLER: It says the same thing.

22 MS. OSIAS: So there was no change?

23 DR. MILLER: Correct.

24 MR. OSIAS: It was a trick question.

25 There was a Master Response prepared. Did you

1 participate in that?

2 DR. MILLER: Yes, I did.

3 MR. OSIAS: We have, therefore, limited changes to the  
4 Final in the areas of air and HCP. We obviously have a huge  
5 number of responses to comments. The question I suppose is  
6 whether this hearing should be limited to the changes, or do  
7 you want me to go into comments and the responses to  
8 comments? The notice suggested it was limited to changes,  
9 and I prefer to do that. But I want to make sure before I  
10 do --

11 CHAIRMAN BAGGETT: That certainly is my preference.  
12 That is how we noticed, otherwise we could go all over the  
13 map.

14 MR. OSIAS: Right. I think since we circulated the  
15 responses to comments is the same as cross. They have  
16 already been through.

17 I have nothing further.

18 Thank you.

19 CHAIRMAN BAGGETT: With that, cross-examination will  
20 begin. Start out with Mr. Gilbert.

21 Do you have --

22 ----oOo----

23 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

24 BY MR. GILBERT

25 MR. GILBERT: Thank you, Mr. Chairman. I just have a

1 couple if they are appropriate.

2           Regarding the decline in numbers of the fish, I think  
3 you mentioned that they were going to be expected to be gone  
4 at the year 2030. Would the appropriate person --

5           MR. CHRISTOPHEL: The information that we have  
6 available to us suggests that by salinity or when a salinity  
7 level of 60 parts per thousand is reached, that reproduction  
8 of tilapia will decline. And again, we are looking at it  
9 from perspective of the birds that rely on those and use at  
10 a point when populations of tilapia is most likely to start  
11 to decline. And then with the mitigation or avoidance  
12 strategies that we have in place that would avoid that  
13 impact until 2030.

14           MR. GILBERT: Do you expect a decline to be straight  
15 line or tend to be cyclical, based on other factors external  
16 from just salinity?

17           MR. CHRISTOPHEL: I suspect that it could be a variety  
18 of things. And I think we acknowledge and recognize that it  
19 is a very complex system and that salinity is only one part  
20 of that.

21           MR. GILBERT: Thank you.

22           That is all I have.

23           CHAIRMAN BAGGETT: Mr. Du Bois.

24           MR. DU BOIS: No, sir.

25           CHAIRMAN BAGGETT: Mr. Rodegerdts.

1 MR. RODEGERDTS: I guess I have nothing.

2 CHAIRMAN BAGGETT: Mr. Rossmann.

3 MR. ROSSMANN: Yes, sir.

4 ---oOo---

5 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

6 BY MR. ROSSMANN

7 MR. ROSSMANN: Good morning. For Dr. Miller and Mr.  
8 Highstreet and Mr. Christophel, I'm Tony Rossmann. I  
9 represent the County of Imperial as contrasted to the  
10 Imperial Irrigation District.

11 Ms. Harnish, you testified that your document  
12 incorporates the files from the Implementation Agreement and  
13 the QSA; is that correct?

14 MS. HARNISH: That's correct.

15 MR. ROSSMANN: Is it your intention to also include  
16 those in the Final EIS that you provide to this Board?

17 MS. HARNISH: You mean to include copies to them?

18 MR. OSIAS: We did.

19 MS. HARNISH: Did you say we did?

20 MR. OSIAS: She may not know.

21 MS. HARNISH: I didn't provide the copies.

22 MR. ROSSMANN: Let me just make sure I have the right  
23 documents here. I assume that you have seen those  
24 documents, the finals?

25 MS. HARNISH: I have seen the QSA, PEIR and the

1 administrative file of the EIS, which was provided by the  
2 Bureau. Yes, I have seen those.

3 MR. ROSSMANN: Maybe I should -- your Honor, let me  
4 just interrupt and perhaps inquire of counsel if he is  
5 planning to make his submission to include these, then I  
6 won't identify these as separate.

7 MR. OSIAS: These were supposedly sent here directly  
8 by the Bureau, and I see Mr. Fecko shaking his head yes.

9 CHAIRMAN BAGGETT: They were.

10 MR. OSIAS: When they were sent to you.

11 CHAIRMAN BAGGETT: They will be entered into the  
12 record.

13 MR. OSIAS: Is this the one you are interested in?

14 MR. ROSSMANN: Yes.

15 For the record, let me just see what you have.

16 Is it your -- let me just ask if these have been served  
17 on all the parties to this proceeding?

18 MR. OSIAS: Yes.

19 MR. ROSSMANN: I will just represent, your Honor, that  
20 I have not seen this, the second volume of the  
21 Administrative Draft, but at least the one purpose I wanted  
22 to clarify that these were going to be introduced so that we  
23 didn't have to independently introduce them.

24 So just for the record, I haven't seen this second  
25 volume. I received a CD-ROM that had the first volume.

1           Ms. Harnish, let me come to the characterization, then,  
2 of the Inadvertent Implementation Agreement, that is to say  
3 this document which is apparently in two volumes. It is  
4 called an Administrative Final EIS.

5           Why does it have the adjective "administrative" in  
6 front of it, if you know?

7           MS. HARNISH: My understanding is the Bureau is still  
8 -- is having their final review. They've assured IID that  
9 it would not change and provided it in that context.

10          MR. ROSSMANN: We do not have a Final Environmental  
11 Impact Statement from the Bureau on the Implementation  
12 Agreement?

13          MS. HARNISH: That's correct.

14          MR. ROSSMANN: What is the status of the Bureau's  
15 review of this transfer EIR/EIS that we have been discussing  
16 this morning?

17          MS. HARNISH: They completed their review of this.

18          MR. ROSSMANN: They have completed their review?

19          MS. HARNISH: Of this EIR/EIS?

20          MR. ROSSMANN: Yes.

21          MS. HARNISH: Yes.

22          MR. ROSSMANN: They have decided -- they have also  
23 approved this or done a NEPA equivalent of a certification?

24          MS. HARNISH: They haven't yet done a NEPA equivalent  
25 of the certification. They haven't filed it yet with EPA.

1           MR. ROSSMANN: Under federal law this is not yet  
2 considered a certified Final Environmental Impact Statement?

3           MR. OSIAS: Clarify. If the EIR has been certified,  
4 the EIS part is not. When you said "this," I didn't know  
5 which part you meant.

6           MS. HARNISH: IID has certified it for the CEQA portion  
7 last Friday, the 28th.

8           MR. ROSSMANN: IID did not wait for the Bureau to  
9 complete its certification on the IA Final Environmental  
10 Impact Statement before it acted, did it?

11          MS. HARNISH: No, they didn't. They couldn't.

12          MR. ROSSMANN: Could you tell us who your contacts are  
13 in administering this EIR with the Imperial Irrigation  
14 District, with whom do you regularly interact in the course  
15 of preparing this?

16          MR. OSIAS: Objection. Relevance.

17          MR. ROSSMANN: My purpose in this line of questioning,  
18 and I guess if counsel is going to force me to give it away,  
19 perhaps it is not too great of a secret. There has been a  
20 lot of speculation as to the status of the federal side of  
21 this document. And whether the Bureau of Reclamation has,  
22 in fact, been satisfied that this document meets NEPA  
23 requirements. And so I was just trying to lay the  
24 groundwork for that, for the level of interaction that these  
25 preparers have had with the Bureau.

1           CHAIRMAN BAGGETT: The objection is relevance.

2           MR. ROSSMANN: Yes. This Board is being asked to act  
3 on this document as an adequate CEQA document. I'm trying  
4 to lay the groundwork that, first of all, it is incorporated  
5 in other documents by reference, and, secondly, it may not  
6 even be a final document since it purports to be a Final  
7 EIR/EIS. And we were assured in Phase I of these  
8 proceedings that the District was not going to proceed on a  
9 two-track process with respect to the federal and state  
10 certifications, that they would come together.

11           So this goes to the point that we raised in our paper  
12 filed last week: Is this project actually right for this  
13 Board's review?

14           MR. OSIAS: That sounds like a lot of argument. Maybe  
15 I could summarize my objection as this Board needs an EIR,  
16 has no requirement to have an EIS. And speculation is  
17 properly named.

18           CHAIRMAN BAGGETT: I'd sustain the objection. We've  
19 got the EIR. It is certified and before us. That is what  
20 we need. It won't be the first time, I think, that we had a  
21 disagreement with federal government on a project. Probably  
22 not the last.

23           MR. ROSSMANN: I just want to reiterate that some -- I  
24 think some of the questions that I have have already been  
25 answered. But I guess, Ms. Harnish, I will direct this to

1 you, and if one of your colleagues has a more specific  
2 answer that would be helpful.

3 But you have not changed your assessment of growth  
4 inducing impacts between the Draft and the Final  
5 Environmental Impact Report?

6 MS. HARNISH: That's correct.

7 MR. ROSSMANN: You have not changed your definition of  
8 the baseline?

9 MS. HARNISH: That's correct.

10 MR. ROSSMANN: In the Final it seemed to me that your  
11 baseline discussion focused on the Salton Sea. But am I  
12 correct in assuming that the baseline also remained  
13 unchanged with respect to the availability of Colorado River  
14 water within the State of California?

15 MR. OSIAS: Objection. At least ambiguous, if not  
16 misstates, that the notion of baseline in the EIR in any way  
17 is used to assess water supply to California as a state.  
18 That is not reviewed in the EIR/EIS, and I don't think that  
19 phrase "baseline" is used at all in that context. It is a  
20 project -- it is -- pardon me. It's a baseline for impacts  
21 on certain resource areas without the project. So when you  
22 compare the project to it, it is not a baseline of  
23 California's water use.

24 MR. ROSSMANN: Let me just rephrase, your Honor.

25 CHAIRMAN BAGGETT: Thank you.

1 MR. ROSSMANN: Ms. Harnish, what does the Final  
2 Environmental Impact Report assume about the enforcement of  
3 California's 4.4 million acre-feet annual limitation of  
4 Colorado River water?

5 MS. HARNISH: I am going to ask Dr. Eckhardt to respond  
6 to that since he focused on the development of the  
7 baseline.

8 MR. ROSSMANN: Great.

9 DR. ECKHARDT: Could you restate the question, please?

10 MR. ROSSMANN: Yes.

11 What does the Final Environmental Impact Report assume  
12 about the level of Colorado River water that will be made  
13 available to all California users under the 4.4 million  
14 acre-foot limitation?

15 DR. ECKHARDT: First of all, there is no change between  
16 the Final and the Draft. So the assumptions made related to  
17 that is that the Secretary would enforce 4.4 on California  
18 when need be.

19 MR. ROSSMANN: The assumption is that there will be a  
20 4.4 -- there will be entitlement enforcement, for want of a  
21 better shorthand phrase?

22 DR. ECKHARDT: Using that term, that's correct.

23 MR. ROSSMANN: So the level of priority for water  
24 available to Metropolitan Water District will decrease  
25 dramatically from its present availability?

1 DR. ECKHARDT: That would totally depend on the future  
2 hydrology.

3 MR. ROSSMANN: I'm going to put aside surplus.  
4 Assuming the Secretary declares no surplus. Under the  
5 baseline condition the quantity of Colorado River water  
6 available to Metropolitan under its fourth priority will  
7 decrease dramatically?

8 DR. ECKHARDT: If by flow surplus you mean a normal  
9 year, that is correct. As I understand, the Secretary would  
10 enforce 4.4.

11 MR. ROSSMANN: That is part of the baseline. That is  
12 the only point I wanted to establish.

13 So in that respect there has been no change in the  
14 Draft and the Final?

15 DR. ECKHARDT: That's correct.

16 MR. ROSSMANN: Now, Ms. Harnish, let me come back to  
17 you for this overarching question, and if you want to refer  
18 back to Dr. Eckhardt that's fine. You have incorporated by  
19 reference both the QSA and the implementation final  
20 documents. We will call them final even though one has the  
21 word "Administrative" in front of it.

22 Is that correct?

23 MR. OSIAS: Counsel, you mean the EIRs not the QSA  
24 itself?

25 MR. ROSSMANN: Yes. I'm sorry. Thank you for that

1 correction.

2 You've incorporated by reference the environment  
3 documents for those two projects?

4 MS. HARNISH: Yes, we have.

5 MR. ROSSMANN: Therefore, I assume that your  
6 Environmental Impact Report stands by the conclusions in  
7 those documents, especially in the area of growth inducement  
8 where you have incorporated by reference that growth  
9 inducement analysis?

10 MS. HARNISH: Yes.

11 MR. ROSSMANN: Mr. Christophel, I want to focus a  
12 little bit on the air quality or the assumptions about when  
13 the impacts will be felt at the Salton Sea. I believe you  
14 testified that you treated for purposes of your analysis  
15 that the impact will be felt in the year 2030?

16 MR. CHRISTOPHEL: Is your question regarding air  
17 quality?

18 MR. ROSSMANN: Regarding the level of the Sea and the  
19 hydrology of the Salton Sea.

20 MR. CHRISTOPHEL: I think if it is an air quality  
21 question you need to direct it to Dr. Dickey.

22 MR. ROSSMANN: Well, let me ask this: I'm looking at  
23 Page 3-53 of the Final, and it says that shoreline exposure  
24 caused by the project will not begin until some time after  
25 the year 2035. And so let me just ask the panel to help me

1 reconcile the difference between 2030 and 2035.

2 MS. HARNISH: I can answer that question. Because the  
3 habitat conservation strategy provides water at a level  
4 greater than the baseline, elevation slightly greater than  
5 the baseline, is projected to -- there is a five-year period  
6 after water is discontinued going to the Sea before the  
7 elevation crosses the baseline. So that is the difference,  
8 the difference between 2030 and 2035.

9 MR. ROSSMANN: Under HCP2 it is your collective  
10 forecast that there will not be a significant shoreline  
11 exposure until 2035?

12 MS. HARNISH: It won't begin until 2035.

13 MR. ROSSMANN: Then let me ask you to turn to Page  
14 4-126, and I'm looking at the Errata, at the bottom of that  
15 page. As I read that Errata, it implies that there will be  
16 16,000 acres of shoreline exposed after the year 2035.

17 MS. HARNISH: That is at the end of the project term;  
18 that would be by 2075.

19 MR. ROSSMANN: At the end of the 75-year term?

20 MS. HARNISH: That's correct. That would occur between  
21 2035 and 2075.

22 DR. DICKEY: And to add to that, that is 16,000 acres  
23 may not materialize for some time after 2035.

24 Is that clear?

25 MR. ROSSMANN: Yes.

1           That is the clarification I needed. We haven't had a  
2 lot of time with these documents, and part of this is truly  
3 so that we don't proceed with any misconceptions.

4           Dr. Dickey, let me ask you this: These moderations, if  
5 you will, of air quality impacts of flow, if you will pardon  
6 the phrase, from the implementation of HCP2; is that  
7 correct?

8           DR. DICKEY: What moderation of impact?

9           MR. ROSSMANN: The moderation of air quality impacts,  
10 the reduction of exposed Sea shoreline and the delay in the  
11 exposure all result because of a decision or a proposed  
12 decision to implement HCP No. 2?

13          DR. DICKEY: I'm going to make a statement and see if  
14 it responds.

15          MR. ROSSMANN: Yes, sir.

16          DR. DICKEY: Up through 2035 there wouldn't be an  
17 increase in sediment exposure, and, therefore, no related  
18 impacts on air quality from emissions from those sediments.

19          MR. ROSSMANN: But if the project of transferring water  
20 were to be implemented without the adoption of HCP2, then we  
21 would have the exposed shoreline of 36,000 acres?

22          DR. DICKEY: I'm going to defer the hydrology to  
23 somebody else. And then if we come back to something  
24 related to emissions or air quality, I will jump back in.

25          MR. ROSSMANN: You all contribute to this. That is why

1 it is great to have you all here.

2 MS. HARNISH: Could you repeat your question?

3 MR. ROSSMANN: My question: If the transfer of water  
4 to San Diego were to be implemented without HCP2 and instead  
5 HCP1, for example, or no habitat conservation plan, then we  
6 would be looking at whatever air quality impacts would flow  
7 from, for example, a 36,000 acre-foot exposure at the Salton  
8 Sea?

9 MS. HARNISH: That is correct. That parallels more  
10 what was the Draft EIR/EIS, but it was not considered the  
11 project. Right now the project is considered to be in  
12 concert with HCP Approach 2, so the impacts are reflected  
13 accordingly.

14 MR. ROSSMANN: Let's focus on HCP2 for a minute.

15 Do I correctly understand that HCP2 is unchanged from  
16 how it was proposed in the Draft?

17 MS. HARNISH: It has been refined.

18 MR. ROSSMANN: Without asking you to take too much of  
19 our time, could you summarize those refinements?

20 MS. HARNISH: I will defer to Dave Christophel on  
21 that. He's much more intimate with it.

22 MR. CHRISTOPHEL: I believe in the Draft environmental  
23 documents that it anticipated the delivery of water or  
24 putting water into the Sea for the duration of the project.  
25 For the purposes of the HCP, again, we were looking at

1 mitigating impacts on fish eating birds, recognizing that  
2 those impacts would occur under the baseline only until as  
3 late as 2030. That then drove the period of time that that  
4 water would be put into the Sea.

5 MR. ROSSMANN: But the source of that water -- has the  
6 source of that water been identified in the Environmental  
7 Impact Report, the source of the additional water that will  
8 be placed into the Sea to achieve the results of HCP2?

9 MR. CHRISTOPHEL: The source has not been identified.  
10 The amount of water going to the Sea or the mitigation is  
11 irrespective of where that water comes from.

12 MR. ROSSMANN: Ms. Harnish, is it your view that the  
13 documents, for example, to carry out HCP2 it is not  
14 necessary to engage in fallowing agricultural lands within  
15 the Imperial Valley?

16 MR. OSIAS: Counsel, for transfer, or do you mean for  
17 mitigation?

18 MR. ROSSMANN: For mitigation.

19 MS. HARNISH: I'm going to have to ask you to restate  
20 that.

21 MR. ROSSMANN: To attain the benefits of HCP2, is it  
22 necessary -- did your analysis conclude or assume that  
23 fallowing of lands in the Imperial Valley would be part of  
24 providing that water supplies?

25 MS. HARNISH: The water for mitigation, yes. This

1 analysis assumed that the water for -- the water to be  
2 created for mitigation would be created by fallowing. It  
3 doesn't preclude other possibilities. But what is evaluated  
4 in this document is that.

5 MR. ROSSMANN: What type of fallowing did the document  
6 evaluate for purposes of making that water available?

7 MS. HARNISH: What type of fallowing?

8 MR. ROSSMANN: Yes.

9 MS. HARNISH: Nonrotational fallowing.

10 MR. ROSSMANN: Nonrotational fallowing. Permanent  
11 fallowing?

12 MS. HARNISH: Nonrotational is defined as greater than  
13 four years.

14 MR. ROSSMANN: Thank you for raising that point,  
15 because that was another question I had. I do believe I  
16 read something like that, that talked about a four-year  
17 program. And maybe I should look at Page 4-63 and see if we  
18 are in agreement.

19 MR. OSIAS: 4-63?

20 MR. ROSSMANN: Yes, 4-63.

21 That is correct. That just helped me to look at my  
22 notes. In fact, your testimony is that the rotational  
23 fallowing would be keeping land out of production for less  
24 than four years, and that anything longer than that would be  
25 considered nonrotational or permanent fallowing?

1 MS. HARNISH: That is correct. We are not using the  
2 term "permanent following."

3 MR. ROSSMANN: What would be the term that we'd want to  
4 use?

5 MS. HARNISH: Nonrotational following.

6 MR. ROSSMANN: Nonrotational following, okay.

7 In looking at the Implementation Administrative file  
8 EIS, which I do not know if you have a copy of that in front  
9 of you, but let me read from that citation in that  
10 document.

11 MS. HARNISH: Which document?

12 MR. ROSSMANN: The administrative file, document one.

13 MR. OSIAS: Can I give her mine?

14 MR. ROSSMANN: Yes.

15 I am looking at Page 3.6-8. In the Bureau's Final on  
16 the Implementation Agreement I see this sentence. On Lines  
17 7 and 8: Rotational following indicates that a particular  
18 parcel of land would be removed from crop production for no  
19 more than three consecutive years.

20 Is that correct?

21 MS. HARNISH: Is it correct that it says that?

22 MR. ROSSMANN: Yes. Have I correctly understood --  
23 have I correctly read from this document?

24 MS. HARNISH: You've correctly read from the document.

25 MR. ROSSMANN: Am I correct in perceiving a discrepancy

1 here between what the transfer EIR considers rotational  
2 fallowing and what the Bureau's document considers  
3 rotational fallowing?

4 MS. HARNISH: It may be a slight inconsistency in the  
5 interpretation of the Statewide Farmland Mapping Program  
6 requirements which says less than four years. I mean, I  
7 don't know exact words. So they have characterized it as no  
8 more than three consecutive years, and we've said less than  
9 four years. Doesn't seem like a huge inconsistency to me.

10 MR. ROSSMANN: With respect to what we might call  
11 nonrotational fallowing, I assume that you all would agree,  
12 and, Ms. Harnish, I will direct this at you, that you would  
13 agree with the QSA Final EIR that to do long-term or  
14 nonrotational fallowing would require a change in the  
15 California Water Code?

16 MR. OSIAS: Objection. Calls for legal conclusion.

17 MR. ROSSMANN: I'm just asking her if she stands by the  
18 statement in the document that they've incorporated. On  
19 that one I would ask you to look at Page L-3 of the QSA  
20 Final EIR.

21 MS. HARNISH: I need a copy of that.

22 MR. ROSSMANN: I will give you my copy as soon as I  
23 turn to it. Maybe your counsel has one.

24 MR. OSIAS: Volume what?

25 MR. ROSSMANN: What I have here, your Honor, is

1 something entitled Comment Letters Received and Response to  
2 Comments.

3 Let me ask you to turn to Page L-3 there.

4 MR. OSIAS: What page?

5 MR. ROSSMANN: L-3.

6 MS. HARNISH: L-3.

7 MR. ROSSMANN: Let me ask this question and then I want  
8 to come back to a technical point. What I am looking at,  
9 Ms. Harnish, is Paragraph 7 on that page.

10 MS. HARNISH: There is one paragraph on my Page L-3.

11 MR. ROSSMANN: Maybe we don't have the same document.

12 MR. HARNISH: Volume 2, Comments and Responses.

13 MR. OSIAS: You don't have the same document.

14 MR. ROSSMANN: Your Honor, I will just represent that  
15 the document I am holding, entitled Comment Letters Received  
16 on the QSA, is the only document that I have received from  
17 the QSA authorities, and I assumed that that was, in fact,  
18 the Final. And it is a separately bound document.

19 CHAIRMAN BAGGETT: May I ask, we have had a number of  
20 documents that aren't in evidence. What does IID plan to  
21 introduce?

22 MR. OSIAS: We plan to introduce the Final EIR/EIS,  
23 which incorporates certain documents. We will introduce  
24 them all.

25 CHAIRMAN BAGGETT: These will all be incorporated?

1           MR. OSIAS: Yes. They were all served, at least I  
2 will represent that the EIR from the IA, which is the  
3 federal document, was served directly by them on the  
4 parties and on the Board.

5           MR. OSIAS: And PEIR that relates to the QSA was  
6 directly served by SAIC, I believe. We served the EIR/EIS  
7 that incorporated them. I have received from them two  
8 volumes, and I will admit that the cover that Mr. Rossmann  
9 has and my cover do not look the same.

10          MR. ROSSMANN: Your Honor, I think now I see why we  
11 have that situation. I will represent that I have not been  
12 served with the entire file EIR and the QSA. What I did  
13 was the comments. So obviously I think, maybe not so  
14 obviously, what the authors of this document did was to meet  
15 their CEQA requirements of responding to the individual  
16 comments of public agencies, put all those comments in a  
17 separate document and shipped those out right away to make  
18 the ten-day rule. So what this document probably consists  
19 of is experts from those two large volumes that Mr. Osias  
20 has on his desk. So I think we are in a situation where the  
21 parties have not all been served with the complete documents  
22 that are incorporated by reference.

23          MR. OSIAS: I can only tell you that we have been  
24 informed by SAIC that they served everybody on the list.  
25 We'll get a certification of service.

1           CHAIRMAN BAGGETT: Please, that will be helpful.

2           MS. HASTINGS: At least on behalf of the San Diego  
3 County Water Authority we can represent that we have, in  
4 fact, received the Programmatic EIR QSA.

5           MR. ROSSMANN: As the lead agency or one of the  
6 so-called agencies, I would have hoped you would have  
7 received that.

8           MS. HASTINGS: As a service as a hearing participant.

9           MR. ROSSMANN: Ms. Harnish, let me give you my copy of  
10 Page L-3 and what is represented as a response to Imperial  
11 County's comments on that document, and ask you to look at  
12 Paragraph 7 of that response to Imperial County's  
13 comments.

14           If IID is incorporating this document by reference, am  
15 I correct in assuming that the position of IID is that in  
16 order to carry out what that paragraph refers to as  
17 permanent following requires a change in the California  
18 Water Code?

19           MR. OSIAS: I'm sorry, Counsel, are you asking her  
20 IID's position?

21           MR. ROSSMANN: I am asking her if, yes, incorporating  
22 that document that their Final EIR agrees with this position  
23 which they have incorporated, that a change in the  
24 California Water Code is required for what that paragraph  
25 refers to as permanent following.

1           MR. OSIAS: I object to the extent the question goes  
2 beyond whether this is, in fact, incorporated in the EIR.  
3 Her knowledge of IID's position on legal matter is not --

4           MR. ROSSMANN: I did misspeak when I said IID's  
5 position. I thought I corrected that. What I am asking for  
6 is: Does the Final EIR of Imperial, which incorporates the  
7 QSA Final EIR, adopt this position that permanent fallowing  
8 requires a change in the California Water Code?

9           MS. HASTINGS: Maybe an objection/clarification. Given  
10 the fact that none of the other parties in the room have at  
11 least been able to look at, review, the document that you  
12 are talking about, can we at least read into the record the  
13 statement that you are referring to?

14           MR. ROSSMANN: That is a constructive suggestion.  
15 Perhaps Ms. Harnish could read into the record Paragraph 7.

16           MS. HARNISH: I would be happy to. This is on Page L-3  
17 of Comment Letters Received on the Implementation of the  
18 Colorado River Quantification Settlement Agreement  
19 Environmental Impact Report and Response to Comments, dated  
20 June 13th, 2002. Page L-3, Paragraph 7.

21                   Your comment is noted, IID recognizes that a  
22                   conflict exists between Water Code Section  
23                   1011 as currently codified and the use of  
24                   permanent land fallowing as a source of  
25                   conserved water. IID does not and has not in



1           Dr. Dickey, let me come back to you. I'm sorry to run  
2 around here. I just had my notes that are probably not in  
3 the most logical order.

4           The emission credits that you described in your Air  
5 Quality Mitigation Plan, do I correctly read the Final as  
6 suggesting that those would not be confined to emission  
7 credits within the Imperial Valley, that, in fact, there  
8 might be trading outside of the Imperial Valley Air  
9 Pollution Control District? I could give you a page  
10 reference.

11           DR. DICKEY: That would be helpful.

12           MR. ROSSMANN: Hang on a second.

13           Well, sir, I think it would be somewhere in Section  
14 3.12 which is your Master Response on air quality.

15           DR. DICKEY: The Master -- just for the record, the  
16 Master Response on air quality is Section 3.9.

17           MS. HARNISH: There is several.

18           MR. ROSSMANN: There are several. You're right.

19           MS. HARNISH: There is one on the Salton Sea.

20           DR. DICKEY: I believe this one had a monitoring  
21 mitigation plan in it.

22           MR. ROSSMANN: Yes, that is where I think it would be.

23           DR. DICKEY: Your question about the interpretation of  
24 this again?

25           MR. ROSSMANN: About the offsets. I think if you will

1 look at Page 3-51, according to my notes there is reference  
2 to neighboring districts?

3 DR. DICKEY: Right:

4 MR. ROSSMANN: For example, if PM-10 were to be  
5 generated at the Salton Sea, one possible implementation of  
6 this mitigation would be to find some PM-10 that is being  
7 discharged in the Southern California Air Quality Management  
8 District and work out an emission trade.

9 MR. OSIAS: Just one second so I can clarify the  
10 record, and perhaps the witness can read.

11 I see no reference to neighboring districts in this  
12 section.

13 MR. ROSSMANN: Let me get my own document in front of  
14 me. But I am asking the witness. He was the one who  
15 formulated this.

16 MR. OSIAS: I want to make sure he is looking at the  
17 right part.

18 MR. ROSSMANN: Let's start without reference to the  
19 document itself. Is part of your mitigation plan that  
20 potential for emission trading with neighboring districts  
21 and not just the Imperial Valley Air Pollution Control  
22 District?

23 DR. DICKEY: I don't believe that that is specified.  
24 Imperial County Air Pollution Control District is cited as  
25 an example. The principle is the use of credits to offset

1 impacts.

2 MR. ROSSMANN: Right. I guess one reason I was  
3 thinking of neighboring districts, sir, is it looks to me on  
4 the bottom of Page 3-51 that the phrase "local air pollution  
5 control districts" appears in the plural. And so that would  
6 have to be something outside of the Imperial County Air  
7 Pollution Control District.

8 DR. DICKEY: It is not a statement that impacts are  
9 expected in multiple districts, if that is what you are  
10 getting at. That is what is not.

11 MR. ROSSMANN: The impact would just be in the Imperial  
12 Valley?

13 DR. DICKEY: There is no prediction of the location and  
14 extent.

15 MR. ROSSMANN: Of these predictions. And no  
16 specification --

17 DR. DICKEY: In this passage.

18 MR. ROSSMANN: How about in your assessment, generally?  
19 Is it your view that the impacts, air impact, would be  
20 confined to the Imperial Valley and Imperial County Air  
21 Pollution Control District?

22 DR. DICKEY: It is stated quite clearly that your  
23 detail assessment of the scale and distribution of those  
24 impacts is very difficult to project. It's in this section.

25 MR. ROSSMANN: I do recall.

1           By the same token, then, the mitigation plan to deal  
2           with those presently remains unspecified, and could include  
3           more -- it could include trading to districts outside of the  
4           Imperial Valley?

5           DR. DICKEY: The first question, which was that the  
6           mitigation plan remains unspecified, I would answer that  
7           there is some specification contained in this section.

8           MR. ROSSMANN: Yes, sir.

9           DR. DICKEY: And the principle of mitigation extends to  
10          the location of those impacts.

11          MR. ROSSMANN: Well, as I read this document, and I am  
12          asking you to tell me if I am incorrect, one possible  
13          mitigation would be to engage in emissions trading,  
14          emissions trading from emissions that originate outside of  
15          the Imperial Valley Air Pollution Control District, Imperial  
16          County?

17          DR. DICKEY: I apologize for not being deeply  
18          experienced in pollutant credit trading. So what I would  
19          imagine is that a tradable pollutant credit would have to be  
20          in the area of impact. You have to trade apples for  
21          apples.

22          So, if you, for instance, have a pollutant credit from  
23          New Mexico, just to pick something extreme, and you want to  
24          mitigate something in Massachusetts, that doesn't work, if  
25          it is a local impact. Likewise it would be the same for air

1 districts as distributed in California. You have to trade  
2 impacts that are reasonably local to the impact.

3 MR. ROSSMANN: So it would be a cause of concern, then,  
4 if future emissions were to be generated at the Salton Sea  
5 and the offset was to credit that against emissions that  
6 generated, for example, in San Bernardino?

7 DR. DICKEY: I think that is a question better answered  
8 by the air pollution control district. They have criteria  
9 for these programs, and they have to deal with their basin  
10 compliance standards, ambient air quality standards. And if  
11 these -- if the trade enables them to achieve those goals,  
12 then I would assume that the trade would be approvable.

13 MR. ROSSMANN: Thank you, sir.

14 In your analysis here in the Final EIR, as I recall,  
15 you spent considerable effort comparing the Salton Sea  
16 projected air quality experience with that at the Owens Dry  
17 Lake; is that correct?

18 DR. DICKEY: We did include a discussion of that. I  
19 would say it is relatively brief.

20 MR. ROSSMANN: Did you include a discussion of the  
21 comparison with Mono Lake?

22 DR. DICKEY: We mentioned Mono Lake. It was part of  
23 the comparison.

24 MR. ROSSMANN: Could you take the time to show me where  
25 you mention Mono Lake? Because I read that pretty carefully

1 looking for that comparison and I didn't see it. So I don't  
2 want to leave here today with the wrong impression.

3 MR. OSIAS: In the interest of time, on the top of Page  
4 3-50.

5 DR. DICKEY: Thank you.

6 I just found it as well.

7 MR. ROSSMANN: Well, let's read the sentence. I see  
8 the word "Mono" in one sentence on this page. Maybe it  
9 appears in more than one place.

10 Would you just read for the record the reference to  
11 Mono Lake in this Page 3-50?

12 DR. DICKEY: Sure.

13 Such exposure at Owens and Mono Lake  
14 generated unmistakable dust emissions.

15 (Reading.)

16 MR. ROSSMANN: Right. And I see later on a sentence,  
17 just to help us along here, the dust mitigation measures  
18 studied and under implementation at other lake beds such as  
19 Mono and Owens may not be feasible or practical at the  
20 Salton Sea.

21 DR. DICKEY: I see that sentence.

22 MR. ROSSMANN: I didn't see any other comparisons  
23 between Owens -- between the Salton Sea and Mono Lake that  
24 paralleled the several pages of discussion and comparison.  
25 In fact, what we are reading from is from a heading that is

1 entitled Similarities to and Differences from Owens Lake.

2 And so-- am I correct? I see graphs here and tables,  
3 and Dr. Smith is here to keep me honest about which are  
4 which.

5 DR. SMITH: Chart.

6 MR. ROSSMANN: Charts, thank you, sir.

7 That compare Salton Sea and Owens Lake. But I don't  
8 see similar comparisons for Mono Lake.

9 DR. DICKEY: The comparison is primarily between Salton  
10 Sea and Owens Lake. Mono Lake is mentioned in the two  
11 locations that you cite because it is relevant at those two  
12 locations. I think if you look at the context of the  
13 section, it will be relatively clear.

14 MR. OSIAS: If I might because this may come up again  
15 and again. This last section of discussion is asking for,  
16 besides assistance and location of text, to explain a  
17 response to comment, not the change in the EIR/EIS. If it  
18 was just help me find it, we got through that. But if we  
19 are really going to debate the merits of a response, that  
20 was the purpose of the limitation that I discussed with the  
21 Chair before.

22 MR. ROSSMANN: I appreciate that. Let me protect those  
23 who follow me since I am now done. I was not asking for  
24 that defense, and your Honor is right. If we got into the  
25 merits of this, we could be here a long time. We may well

1 be at some point.

2 However, the testimony was that there were two changes  
3 in this final document, the air mitigation plan and the  
4 treatment of the HCPs. So I was focusing on that air  
5 mitigation plan.

6 Thank you very much, your Honor.

7 Thank you, members of the panel.

8 CHAIRMAN BAGGETT: Thank you.

9 MR. ROSSMANN: I think I have some of my papers up  
10 there. I should probably get those back.

11 CHAIRMAN BAGGETT: Mr. Fletcher, how long?

12 MR. FLETCHER: I would say over a half hour.

13 CHAIRMAN BAGGETT: Over a half hour.

14 Let me just get an idea of how -- nobody is here from  
15 National Wildlife.

16 Audubon, do you have lengthy cross? I'm just trying to  
17 get an idea of cross.

18 MR. YATES: I don't think it is lengthy.

19 CHAIRMAN BAGGETT: Sierra Club and PCL are not  
20 represented here today.

21 Salton Sea.

22 MR. KIRK: Extensive.

23 CHAIRMAN BAGGETT: "Extensive" meaning one hour?

24 MR. KIRK: Yes.

25 CHAIRMAN BAGGETT: Two hours?

1 MR. KIRK: If you give it to me.

2 CHAIRMAN BAGGETT: This is limited to the changes. I  
3 want people to keep that in mind. We've already been  
4 through I don't know how many hours on the Mono Lake air  
5 issue already.

6 Colorado Indian River Tribes aren't here.  
7 San Diego.

8 MS. HASTINGS: Maybe one.

9 MR. OSIAS: Hour?

10 MS. HASTINGS: Question.

11 CHAIRMAN BAGGETT: One question. I guess at that point  
12 we will see if there is any redirect.

13 Let's take an early lunch. Some of us have been up  
14 since five. At least one of us in this room has, even  
15 though we didn't start till ten. Long travel for a lot of  
16 us.

17 Let's take an early lunch and come back at 12:30.  
18 We'll go with Defenders. I'm willing to go late. Try to  
19 get done today, that would certainly be my preference. I  
20 assume everybody else's.

21 Okay, recess.

22 (Luncheon break taken.)

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AFTERNOON SESSION

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

MR. DU BOIS: Mr. Baggett, your Honor, I plead fossilized brain at the time that I was offered an opportunity to cross-examine. May I ask your indulgence in my appearance now?

CHAIRMAN BAGGETT: Is there any objection?

MR. YATES: Truth is a defense.

MR. OSIAS: With the expressed no precedent rule.

CHAIRMAN BAGGETT: No precedent rule.

---oOo---

CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT  
BY MR. DU BOIS

MR. DU BOIS: Thank you.

I think all of you know me. I am Bill Du Bois, I am representing myself and my family in this issue. I am a landowner in Imperial Valley and have been a farmer.

I think I will start my questions with Ms. Harnish as the team leader. And explain that as I understand the Final EIR/EIS, HCP2 is the only option to mitigate the impacts on the proposed transfer on Salton Sea.

Is that correct?

MS. HARNISH: That is correct.

1 MR. DU BOIS: HCP2 means, as I understand it, some  
2 70,000 acres of presently farmed land will be left dry; is  
3 that correct?

4 MS. HARNISH: That is not exactly correct.

5 MR. DU BOIS: What is exactly correct?

6 MS. HARNISH: Actually, the HCP2 doesn't specify where  
7 the water could come from for mitigation. What is required  
8 for the HCP doesn't say it must come from fallowing. The  
9 EIR/EIS evaluates that it could -- evaluates it coming from  
10 fallowing in Imperial Valley.

11 MR. FLETCHER: May I ask a point of clarification? Are  
12 we talking about HCP2 or HCP that is in the Final EIR? Just  
13 a question.

14 MR. OSIAS: Objection. Ambiguous. That is his  
15 objection.

16 CHAIRMAN BAGGETT: I understand.

17 MS. HARNISH: I'm sorry. I'm referring to the Salton  
18 Sea Habitat Conservation Plan in the Final EIR, formerly  
19 known as HCP2.

20 MR. DU BOIS: How many acre-feet, then, would that  
21 entail?

22 MS. HARNISH: Well, the water for mitigation, the  
23 amount of water required for mitigation, would be dependent  
24 on what type or how the water is created for transfer. So  
25 the water for transfer could be created through efficiency

1 conservation measures or fallowing.

2 So the amount of required via fallowing to create water  
3 for mitigation would depend on how the water for transfer is  
4 created. The HCP would create enough water to match the  
5 baseline, to match the reduction in inflows. That reduction  
6 in inflows would vary in depending how the water is created.  
7 So the implementation of the Salton Sea Habitat Conservation  
8 Strategy doesn't assume that all of the water that --  
9 doesn't assume 75,000 acres because it doesn't assume that  
10 the water for transfer -- that it doesn't require that the  
11 water for transfer be created via fallowing.

12 MR. DU BOIS: There is some question whether it might  
13 all be created by on-farm conservation?

14 MS. HARNISH: The current EIR/EIS preserves the  
15 flexibility that the water could be created through  
16 conservation. It does not -- it doesn't consider it  
17 practical to create the 300,000 acre-feet for transfer using  
18 conservation measures and then do another -- have to create  
19 mitigation water using fallowing. It is not considered  
20 practical, so the HCP that is assessed looks at fallowing.

21 MR. DU BOIS: Let me ask it this way: As you  
22 anticipate the affect of mitigation, would it entail  
23 fallowing on more or less than, say, 50,000 acres?

24 MS. HARNISH: To create the --

25 MR. DU BOIS: The mitigation water.

1 MS. HARNISH: To create the mitigation water, again, it  
2 could depend on how the water is created for transfer. If  
3 the water created for transfer is created through fallowing,  
4 then an additional 25,000 would be required for the  
5 mitigation water, approximately, depending on what acres are  
6 used and historical use of those acres.

7 MR. DU BOIS: In that case, how would this water, which  
8 is now used to irrigate farmland, be physically routed to  
9 the Sea?

10 MS. HARNISH: I don't know the answer to that  
11 question.

12 MR. DU BOIS: Any of the other witnesses know?

13 DR. ECKHARDT: I don't know specifically. There could  
14 be several ways it could be routed to the Sea.

15 MR. DU BOIS: Would that be left up to the Irrigation  
16 District or who would make that choice?

17 DR. ECKHARDT: I really don't know. I am sure the  
18 Irrigation District would have input into that decision.

19 MR. DU BOIS: Would one option be to dump it into the  
20 drains, say, at midpoint or headwaters and let it flow into  
21 the Sea?

22 DR. ECKHARDT: I am sure there are many options. It's  
23 going to depend on infrastructure, biological impacts, all  
24 the various components of that would have to be considered,  
25 including Imperial Irrigation District operations or whether

1 that could handle those types of things. There are too many  
2 factors for me to say could we just put in the midpoint of  
3 the drains at this point.

4 MR. DU BOIS: It could simply be a matter of  
5 decreasing the efficiency of the distribution system and  
6 dumping it at the end of the canal, of each canal?

7 DR. ECKHARDT: Again, that possibly could be one way to  
8 do it. It's going to depend on the amount and all of the  
9 potential effects of doing it that way.

10 MR. DU BOIS: As you may anticipate, part of my chief  
11 interest in this matter is what will be the effect on our  
12 drain ditches, because I think our drain system is essential  
13 to farming. And so I wondered if you have any comment on  
14 what will be the effect on our drain ditches, Ms. Harnish?

15 MS. HARNISH: I think I would need a more specific  
16 question. But I would also defer to either Dave Miller or  
17 John Eckhardt, depending on what type of impact on the drain  
18 you are referring to.

19 DR. ECKHARDT: There could be -- obviously, there could  
20 be all types -- all different types of effects of putting  
21 drain water in the drains, and that is what I don't know at  
22 this point. And those vary from biological to hydrologic  
23 and hydraulic effects in those drains. So there would  
24 certainly be effects to look at when that decision is made.

25 MR. DU BOIS: There is something going on concurrently

1 with this campaign to transfer water, and that is the effort  
2 of the Colorado River Regional Water Quality Control Board  
3 to reduce the nutrients and the silt in our drain ditches.

4 Was that taken into consideration as you must have  
5 considered ways to get the water to the Sea? And was that  
6 one of the issues that was taken into consideration?

7 DR. MILLER: Yes, it was. We were aware of the TMDL  
8 development being in the area. This is not a change in the  
9 project for you. This doesn't have to do with the HCP. But  
10 most of the water conserved by on-farm conservation would be  
11 tailwater reduction. And that reduction in tailwater  
12 corresponds or would bring about a reduction in sediment  
13 loading to the drains. And a reduction in the loading of  
14 nutrients, pesticides, that are transported through  
15 tailwater either as chemicals that are attached to sediment  
16 or as dissolved chemicals.

17 MR. DU BOIS: Let me ask you a follow-up question to  
18 that. What would be the effect of the remaining total flow,  
19 the water quality of that total flow remaining in the drain  
20 ditches?

21 MR. OSIAS: After the HCP, is that the question?

22 MR. DU BOIS: Yes, yes. Pardon me.

23 DR. MILLER: As John explained, at this point I do not  
24 believe there is an operating plan for routing mitigation  
25 water from wherever, whatever point it is generated to the

1 Sea, so I don't want to speculate on how that would work.

2 MR. DU BOIS: It is reasonable to conclude there is  
3 considerable hazard to the operation of our farming system?

4 MR. OSIAS: Objection. The question is ambiguous.  
5 Hazard from what?

6 CHAIRMAN BAGGETT: Could you restate your question?  
7 Sustained.

8 MR. DU BOIS: Let me put it this way: Have you  
9 anticipated whether the water quality in the tile lines and  
10 in the effluent will become an issue?

11 MR. OSIAS: Objection. With respect to what? I assume  
12 we are focused on the HCP.

13 MR. DU BOIS: Let me lay a background for this.

14 CHAIRMAN BAGGETT: Sustained.

15 MR. DU BOIS: I have experienced quite a bit of history  
16 in the Westlands Water District when their tile system was  
17 terminated.

18 Are you aware of that situation?

19 DR. MILLER: Yes, I am.

20 MR. DU BOIS: You are?

21 DR. MILLER: Yes, I am.

22 MR. DU BOIS: My question then is: Have you  
23 anticipated any danger that may occur to Imperial for a  
24 termination of or a diminution of our tile system?

25 MR. OSIAS: Objection. It calls for an answer beyond

1 the scope of the HCP. I don't think we have established any  
2 foundation that the HCP mitigation water will or will not  
3 get to the Sea through tile lines. This question is about  
4 injury to tile lines.

5 CHAIRMAN BAGGETT: I understand. Sustained.

6 Can you --

7 MR. DU BOIS: I think I have considerable questions now  
8 as a result of the answers and the concerns about the  
9 questions that I am forewarned that we are in a hazardous  
10 situation, and that is why I wanted to know.

11 If our tile lines are --

12 CHAIRMAN BAGGETT: I understand that. But somehow can  
13 you -- I think the objection, one, was you've got to somehow  
14 establish that that is even in the EIR, they dealt with tile  
15 lines or said water was coming from tile lines. Maybe you  
16 want to ask some questions to establish that water -- in  
17 fact, they've looked at that as a way the water is to be  
18 transported. The objection was that is a foundation, that  
19 we don't know that that is a fact in the EIR. That hasn't  
20 been brought out.

21 MR. OSIAS: I think the other part is, Mr. Chairman,  
22 that, of course, the Draft EIR had following as an  
23 alternative. We had witnesses up here that they had plenty  
24 of opportunity to cross-examine on all the impacts of  
25 following. There is no change to those alternatives. This

1 is a creation of transfer water. The change is with respect  
2 to an HCP now which causes water to be put into the  
3 Sea. Mr. Du Bois has established that that is the case.  
4 Then his question was how does it get there, and then he  
5 jumps to --

6 CHAIRMAN BAGGETT: I understand. Mr. Du Bois, there is  
7 a gap. The objection was you haven't -- you're over here.  
8 You haven't closed that gap. I am trying to help you with  
9 that since --

10 MR. OSIAS: I also don't want to open the door for just  
11 fallowing questions again.

12 CHAIRMAN BAGGETT: I understand.

13 MR. DU BOIS: I understand the concern. But when the  
14 witnesses say that they don't know how the water is going to  
15 get to the Sea --

16 CHAIRMAN BAGGETT: That is what they've said. You can  
17 make that argument when you argue in your closing, you can  
18 bring that up. This isn't the place to do that now.

19 MR. DU BOIS: I want to ask a question and that is:  
20 What is the difference between Imperial Irrigation District  
21 system, drainage system, and Westlands drainage system?  
22 What is the difference that would protect us from having our  
23 tile lines cemented closed?

24 MR. OSIAS: Objection. Exceeds the scope of change to  
25 the EIR/EIS.

1           CHAIRMAN BAGGETT: The purpose that -- I would sustain  
2 that. The purpose is to only changes between the Draft and  
3 the Final, and that wasn't testified to today at all or  
4 wasn't in any of the written comments about closing the tile  
5 lines or any of that, to my knowledge, unless somebody can  
6 show me where that is. That is beyond what we are here  
7 for. There was no testimony to that effect.

8           MR. DU BOIS: I think I have the answer.

9           CHAIRMAN BAGGETT: You will get a chance to argue with  
10 us when you come up with the closing.

11          MR. DU BOIS: Thank you very much.

12          CHAIRMAN BAGGETT: Thank you.

13          Mr. Fletcher, Defenders of Wildlife.

14   ---oOo---

15   CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

16   BY DEFENDERS OF WILDLIFE

17   BY MR. FLETCHER

18          MR. FLETCHER: I am Brendon Fletcher, and I represent  
19 Defenders of Wildlife.

20           I would like to start out with a few questions about  
21 how and when water would be supplied to the Sea under the  
22 new Habitat Conservation Plan, the strategy for the Salton  
23 Sea.

24           How will the annual amount of water to be supplied to  
25 the Sea be determined? And I think that may be Mr.

1 Christophel, but if somebody else is more appropriate that  
2 is fine.

3 MS. HARNISH: He's looking at Dr. Eckhardt.

4 DR. ECKHARDT: You're asking an operational question  
5 and, of course, our analysis doesn't necessarily deal with  
6 the exact operational issues, so I'd only have to  
7 hypothesize how that would be done.

8 So, that is the best I can do under the situation.

9 MR. FLETCHER: Can I ask you to turn to Page 3-37, and  
10 toward the bottom of the page under the heading Mitigation  
11 Water to the Sea, five lines down, six lines down, the  
12 sentence beginning "The annual amount."

13 Could you read that for me, please?

14 DR. ECKHARDT: The annual amount of mitigation water  
15 would be equal to the actual flow reduction  
16 caused by the water conservation transfer  
17 component of the project plus or minus an  
18 amount of water necessary to maintain the  
19 target salinity trajectory. (Reading.)

20 MR. FLETCHER: So am I correct in understanding that to  
21 describe how the annual amount of water will be supplied to  
22 the Sea will be determined?

23 DR. ECKHARDT: Yes. That is what I would call a  
24 guiding statement, that isn't actually how, that isn't the  
25 implementation of it. That would be the guide for the

1 implementation.

2 MR. FLETCHER: If the salinity of the Sea under the new  
3 HCP reaches 60 parts per thousand, IID's obligation to  
4 supply water to the Sea will cease; is that correct?

5 MS. HARNISH: Yes.

6 MR. FLETCHER: That is projected, we can look up at  
7 Figure 3.5-1 which is also on 3-37. That is directed, the  
8 mean projection is the year 2023?

9 MS. HARNISH: That's correct.

10 MR. FLETCHER: If salinity reaches 60 parts per  
11 thousand before 2023, as you project in the baseline, due to  
12 factors beyond IID's control, then IID's obligation will  
13 cease at the time that it actually reaches 60 parts per  
14 thousand; is that correct?

15 MS. HARNISH: That's correct.

16 MR. FLETCHER: That is because it wouldn't be fair to  
17 hold IID responsible for impacts to the Sea that aren't a  
18 result of its actions. Is that basically the idea?

19 MS. HARNISH: That's right.

20 MR. FLETCHER: Let's say salinity in the Salton Sea  
21 increases at a rate slower than suggested by Figure 3.5-1  
22 for reasons that have nothing to do with IID's actions. If  
23 that took place, IID would not be -- would still not be  
24 obligated to provide the Sea with an amount of water equal  
25 to the amount of inflow reduction; is that correct?

1 MS. HARNISH: Could you restate that question?

2 MR. FLETCHER: Let me back up, and I will just refer to  
3 the description of how the annual amount will be calculated  
4 at the bottom of 37. It says there that the annual amount  
5 of mitigation water would be equal to the actual inflow  
6 reduction. That is the first calculation.

7 Then a second is made, which is plus or minus an amount  
8 of water necessary to maintain salinity trajectory, correct?

9 MS. HARNISH: Yes, that is what the statement says.

10 MR. FLETCHER: If salinity increases at a rate slower  
11 than projected under the baseline, the salinity trajectory  
12 would be maintained even if IID didn't contribute the full  
13 amount of water that it reduced as a result of the  
14 transfer?

15 MS. HARNISH: That was a mouthful.

16 MR. FLETCHER: I will give it another try.

17 Let's say that salinity increases at a rate slower than  
18 projected under the baseline. The salinity trajectory, that  
19 is the target, would be maintained without IID contributing  
20 an amount of water that is the full or equal that is  
21 equivalent to the amount of inflow reduction that it is  
22 responsible for; is that correct?

23 DR. ECKHARDT: That's correct.

24 MR. FLETCHER: Why is that? Why does IID not have to  
25 provide the full amount of water that it is causing the Sea

1 to lose?

2 DR. ECKHARDT: The thought here in this, and this was  
3 something that was discussed at length with Fish and  
4 Wildlife Service and California Fish and Game, was that the  
5 first part of that statement that I read said that we would  
6 replace, IID would replace one for one. So what would  
7 happen is if the depletion of the Sea is X, the replacement  
8 to the Sea would be X. But that only gets you the baseline,  
9 the baseline projection.

10 In addition there is going to be an additional amount  
11 that would be determined to keep the salinity to 60 parts  
12 per thousand to the year 2030. Now what happens there is  
13 there may, as it says, there may be an additional amount  
14 required to get -- to keep the salinity of the Sea to 60  
15 parts per thousand to year 2030 in addition to X, or what  
16 would happen if a rainstorm happened that year and it put a  
17 lot of water in the Sea? In that case there is an allowance  
18 for IID to put less water in the Sea so we still maintain  
19 the trajectory of 60 parts per thousand to the year 2030.  
20 It takes into account natural events.

21 MR. FLETCHER: Well, let's follow that up a little  
22 bit.

23 What would happen for reasons unforeseen in a  
24 calculation of a baseline and inflows to the Salton Sea  
25 would be 1.34 but for the effects of the transfer? I

1 believe you were here when there was testimony previously  
2 that we have not reached 60 parts per thousand until the  
3 year -- I can't recall, maybe year 2060, in thereabouts.

4 Is that right? Do you recall that?

5 DR. ECKHARDT: I don't recall the year.

6 MR. FLETCHER: Let's say we wouldn't achieve 60 parts  
7 per thousand, would not be reached until 2060.

8 DR. ECKHARDT: I don't understand that. Let's say you  
9 want that to be an assumption here?

10 MR. FLETCHER: Yes.

11 So the salinity trajectory is significantly different  
12 than projected in the baseline?

13 DR. ECKHARDT: Which would be with no project.

14 MR. FLETCHER: Right.

15 Now IID would not be responsible for a one-to-one  
16 replacement of its inflows in that scenario; is that  
17 correct?

18 DR. ECKHARDT: I don't know. I can't answer that  
19 because the issue is it is a one-for-one replacement, plus  
20 getting the trajectory to year 2030. So under your  
21 hypothesis or under your assumption here, I don't know, I  
22 would have to calculate all that.

23 MR. FLETCHER: You are aware that some parties to this  
24 proceeding have disputed the projections for the rate of the  
25 Sea's increase in salinity; is that correct? And those

1 parties have argued that the Sea will become more saline and  
2 more -- I'm sorry. Let me rephrase that.

3 Those parties have argued that the Sea will become  
4 saline more slowly than projected under the baseline; is  
5 that correct?

6 MR. OSIAS: Objection. Exceeds the scope of change in  
7 the EIR. Baseline didn't change. We have been through that  
8 cross-examination on whether the baseline is right or not  
9 already.

10 MR. FLETCHER: I am simply asking the question for  
11 purposes of laying a foundation for an initial question on  
12 the circumstances in which IID will be required to supply  
13 water to the Sea.

14 MR. OSIAS: I don't understand how reminding him of  
15 earlier parties' arguments about --

16 CHAIRMAN BAGGETT: I will sustain it.

17 Rephrase it.

18 MR. FLETCHER: That is not really what I was getting  
19 at.

20 If the Sea becomes saline more slowly than projected  
21 under the baseline, as a general matter, IID will not have  
22 to supply the Sea on a one-to-one basis with the water  
23 corresponding to the reduction in inflows, correct?

24 DR. ECKHARDT: It is not correct. I don't know.

25 MR. FLETCHER: Is the goal of the Salton Sea HCP from a

1 salinity balance point of view to maintain the target  
2 salinity trajectory?

3 DR. ECKHARDT: I don't know what you mean by "target  
4 goals trajectory." The goal is to maintain the salinity of  
5 the Sea at or below 60 parts per thousand to the year 2030.

6 MR. FLETCHER: I actually think that the term "salinity  
7 trajectory" may appear in the target trajectory. In any  
8 event, it is to -- the goal is to have it reach that -- to  
9 maintain a trajectory in which the salinity of the Sea would  
10 reach 60 parts per thousand in the year 2030 irrespective of  
11 whether the amount of mitigation water provided to the Sea  
12 is equivalent to the inflow reduction attributable to the  
13 project; is that correct?

14 DR. ECKHARDT: Yes, that is correct, based on what I  
15 stated earlier.

16 MR. FLETCHER: Would it be possible to develop a  
17 mitigation strategy that works on a one-to-one basis? In  
18 other words for every acre-foot of inflow reduction an  
19 acre-foot would be provided to the Sea?

20 DR. ECKHARDT: Anything is possible. However, what has  
21 to be taken into account is flooding and the dike situation  
22 that IID faces around the Sea. So one of the issues there  
23 would be is replacing one-to-one and you have several  
24 rainstorms being hydrologic events, are you still going to  
25 replace one to one and flood out all the geothermal plants,

1 for instance.

2 MR. FLETCHER: Could I ask you to turn to Page 3-38,  
3 Figure 3.5-2? See that figure?

4 DR. ECKHARDT: Yes. I assume you are addressing all of  
5 us.

6 MR. FLETCHER: I will stick with you for a second as  
7 long as it makes sense.

8 That figure shows an elevation of the Sea under both  
9 baseline and project conditions decreasing beginning in the  
10 year 2000. We'll just say 2003.

11 Is that right, beginning year 2000?

12 MR. OSIAS: Is that a question?

13 MR. FLETCHER: I'll rephrase.

14 Thank you.

15 Does that figure show projected elevation of the Salton  
16 Sea under the proposed project and the baseline beginning in  
17 the year 2000?

18 DR. ECKHARDT: Does it show a decrease, is that what  
19 you are asking?

20 MR. FLETCHER: Does it show the projected elevation?

21 DR. ECKHARDT: Yes.

22 MR. FLETCHER: It shows it decreasing over time under  
23 both scenarios?

24 DR. ECKHARDT: That's correct.

25 MR. FLETCHER: Let's say it is year 2008, and allowing

1 for slight differences, the mean elevation of the Sea is  
2 projected to be approximately negative 230 feet under both  
3 scenarios; is that correct?

4 DR. ECKHARDT: That's correct.

5 MR. FLETCHER: If the Sea is three feet below its  
6 current elevation, would there be a danger of flooding if  
7 there is a storm event?

8 DR. ECKHARDT: Depends on the size of the flood event  
9 and the wind conditions.

10 MR. FLETCHER: So there could be a flood event that  
11 could raise the entire Sea's elevation by three feet?

12 DR. ECKHARDT: Wave action regularly raises the Sea at  
13 the dikes by three feet.

14 MR. FLETCHER: I'd like to ask a couple questions, and  
15 these may be most appropriately directed to Ms. Harnish  
16 about how the project -- what the project description is now  
17 that the new Salton Sea Habitat Conservation Strategy has  
18 been added.

19 If I could ask you to stay on Page 3-38 for a moment.  
20 Under the footnote to that figure it says that  
21 implementation of the Salton Sea Habitat Conservation  
22 Strategy in concert with only on-farm consistent based  
23 conservation measures is not currently considered to be  
24 practicable.

25 Can you tell me why it is not currently considered to

1 be practicable?

2 MS. HARNISH: Because if 300,000 acre-feet of water is  
3 created using conservation measures, an additional, assuming  
4 the one-to-one requirement of matching reduction inflow to  
5 mitigation water, an additional 300,000 acre-feet a year  
6 would need to be created via fallowing or some other means  
7 to provide that mitigation water to the Sea. That is not  
8 considered to be economically feasible or practicable. That  
9 it is -- there is not -- I think there is not -- that is all  
10 I'll say on this. It is not considered to be economically  
11 feasible.

12 MR. FLETCHER: Is that because there would be money  
13 invested on the one hand in conservation measures which  
14 would reduce inflows to the Sea and --

15 MS. HARNISH: Yes. You would have both the cost of  
16 implementing conservation measures and then the  
17 socioeconomic effects of fallowing.

18 MR. FLETCHER: Now please answer the next question  
19 using basically the same considerations and standards that  
20 went into making the judgment of nonpracticability that we  
21 discussed a minute ago.

22 Using those considerations, what would be a  
23 practicable project?

24 MS. HARNISH: What would be practicable?

25 MR. FLETCHER: Yes.

1 MS. HARNISH: I guess what would be practicable would  
2 be generating water for transfer using fallowing and some  
3 other means. I have to think about it. And it could be  
4 some combination of water -- a combination of means of  
5 generating water for transfer and a range of means for  
6 generating water for the mitigation, as well.

7 So I think it is the all conservation measures and all  
8 fallowing for transfer and all fallowing for mitigation  
9 water that is impracticable, but some blending of the two  
10 and at what level each one might occur and still be  
11 practicable hasn't been defined.

12 MR. FLETCHER: So basically it could be some mix, but  
13 we don't know what the mix might be?

14 MS. HARNISH: That's right.

15 MR. FLETCHER: Are there limits on -- why don't we know  
16 what the mix would be at this time?

17 MS. HARNISH: We haven't done that analysis of doing a  
18 kind of sensitivity, at what point that impracticability  
19 occurs.

20 MR. FLETCHER: Is it fair to state at this point the  
21 project, the proposed project, is actually not a project to  
22 conserve the water through on-farm conservation measures and  
23 system improvements, but, in fact, a project that would use  
24 some combination of all of them -- perhaps of all the  
25 conservation measures?

1 MS. HARNISH: The proposed project is two components.  
2 It's the creating water for conservation -- creating water  
3 for transfer, and that can be created using on-farm system  
4 based conservation measures and/or fallowing. The second  
5 component is the HCP or the Salton Sea Habitat Strategy and  
6 other elements of the HCP, and that would be providing --  
7 generating water for transfer -- the words, there are just  
8 too many of them -- for mitigation, and what is assessed in  
9 the EIR/EIS is generating that water for mitigation via  
10 fallowing. However, it could be generated in other ways.  
11 If other ways are selected, then additional environmental  
12 review might be required.

13 MR. FLETCHER: You just said the sources of mitigation  
14 water for the HCP are limited to fallowing. What are the  
15 potential sources again?

16 MS. HARNISH: Could be fallowing in other areas and  
17 water exchanges.

18 MR. FLETCHER: Outside IID's service area?

19 MS. HARNISH: Outside IID's service area.

20 Could be other sources, water purchased by IID.

21 MR. FLETCHER: As of this time the potential sources  
22 are hypothetical?

23 MS. HARNISH: That's right.

24 MR. FLETCHER: And IID hasn't identified any actual  
25 potential sources?

1 MS. HARNISH: Depends what you mean.

2 MR. FLETCHER: Specifically identified additional  
3 sources.

4 MS. HARNISH: Just in concept.

5 MR. FLETCHER: I will move on to a few questions, I  
6 think, for Mr. Dickey on air quality.

7 Can I ask you to turn to Table 3.9-1?

8 DR. DICKEY: 3-48.

9 MS. HARNISH: Table 48.

10 MR. FLETCHER: We are looking for the record at Table  
11 3.9-1 which is on Page 3-48. That table shows that at  
12 Niland winds ten meters above the ground exceed 19 miles per  
13 hour 4.4 percent of the time.

14 Do you know how many hours that works out to?

15 DR. DICKEY: No.

16 MR. FLETCHER: Would you be surprised if I said that is  
17 385 hours?

18 DR. DICKEY: No.

19 MR. FLETCHER: Do you know how many days a week that  
20 works out to of wind continuously blowing at 19 miles per  
21 hour or above? In other words, blowing 24 hours a day?

22 DR. DICKEY: You are asking if I made this  
23 calculation?

24 MR. FLETCHER: Yes.

25 DR. DICKEY: I haven't made that calculation.

1           MR. FLETCHER:  Would you be surprised that that is  
2 about 17 days?

3           DR. DICKEY:  No.

4           MR. FLETCHER:  What is the significance of 19 miles per  
5 hour?

6           DR. DICKEY:  They're thresholds that have been chosen  
7 for data presentation.  That is really about it.

8           MR. FLETCHER:  The threshold is chosen for what  
9 reason?

10          DR. DICKEY:  These particular thresholds don't have a  
11 specific physical meaning besides their velocity.  There are  
12 other thresholds.

13          MR. FLETCHER:  What is the threshold for wind salt  
14 crusts beginning to break up at Owens Lake?

15          DR. DICKEY:  That is 17, I believe.

16          MR. FLETCHER:  Using this data, it could be that winds  
17 blowing at Niland were about 17 days a year, if the wind is  
18 blowing continuously above the level of threshold for  
19 emissions at Owens Lake?

20          DR. DICKEY:  I don't know if that is a proper --

21          MR. OSIAS:  Objection.  Assumes that wind threshold for  
22 emissions is only relevant at Owens Lake and then is  
23 transferable here.  The fact that that is true, there is no  
24 evidence of that.  A, it's a lack of foundation and, B,  
25 assumes fact not in evidence.

1 MR. FLETCHER: I will move on. That's fine.

2 Now on Page 350, actually the page isn't that  
3 important. There is no evidence that dust control measures  
4 implemented at Mono and Owens Lakes may not be -- that they  
5 would be feasible or practicable at the Salton Sea. My  
6 question is just which dust control measures are being  
7 referred to there?

8 DR. DICKEY: The dust control measure that was  
9 implemented at Mono Lake was filling the lake to a certain  
10 elevation. The dust control measures implemented at Owens  
11 Lake include shallow flooding, wetting of the soil surface  
12 and vegetation of the soil surface.

13 MR. FLETCHER: So it includes all of those? In other  
14 words, all of those may not be feasible at the Salton Sea?

15 DR. DICKEY: Yes.

16 MR. FLETCHER: Why is that?

17 DR. DICKEY: To fill a lake you have to have water. To  
18 wet a lake you have to have water. To vegetate a lake you  
19 have to have water. You have to assure a water supply.  
20 There is one, just as an example.

21 When you want to vegetate a saline lake bed, you've got  
22 some serious challenges. Plants don't like to grow out  
23 there. There is another example.

24 MR. FLETCHER: I want to ask you a couple questions  
25 about the Four Step Mitigation Plan. Will IID be

1 responsible for conducting the research and monitoring the  
2 second step of the Four Step Plan?

3 DR. DICKEY: It is a commitment under the document. I  
4 don't believe that the executing agency is specified.

5 MR. FLETCHER: Has it been specified who will pay for  
6 this research and monitoring?

7 DR. DICKEY: No.

8 MR. FLETCHER: The third step is an emission reduction  
9 credit program. Under this program would it be possible for  
10 severe dust problems along the shoreline of the Sea to be  
11 offset by reducing moderate dust emission problems across a  
12 broad variety?

13 DR. DICKEY: The rules for a trading program would be  
14 set by the air quality authority. I am not privy to those.

15 MR. FLETCHER: This basically is a plan in concept?

16 DR. DICKEY: Yes.

17 MR. FLETCHER: The final step in that mitigation plan  
18 is to create measures that correctly reduce emissions to the  
19 Sea. Would IID be responsible for financing measures to  
20 reduce emissions?

21 DR. DICKEY: I've already responded on the financing.

22 MR. FLETCHER: Have you developed any estimates of how  
23 much those measures might cost?

24 DR. DICKEY: I am aware of unit cost at other  
25 locations, but without some idea of the scale of the problem

1 at the Salton Sea, you can't estimate those costs.

2 MR. FLETCHER: Now, the problem assessment and the  
3 mitigation implementation occur, as I understand it, after dust  
4 emissions developed; is that correct?

5 DR. DICKEY: Could you restate, please?

6 MR. FLETCHER: Yes.

7 The assessment of the problem and developing specific,  
8 direct mitigation measures would occur after dust emissions  
9 developed along the shoreline of the Salton Sea?

10 DR. DICKEY: No.

11 MR. FLETCHER: When would those occur?

12 DR. DICKEY: There are two questions there. You want  
13 to break it down?

14 MR. FLETCHER: Can you tell me why they would not occur  
15 after development of dust emissions at the Sea? Actually  
16 -- Strike that.

17 Can we turn to Page 3-53, first full paragraph? Six  
18 lines down the sentence beginning with "However." Read that  
19 to me.

20 DR. DICKEY: However, problem assessment and mitigation  
21 -- problem assessment and mitigation implementation would  
22 occur subsequent to the development of potential dust  
23 emissions.

24 MR. FLETCHER: So, is it the case that actually you'd  
25 assess the problem and develop and implement mitigation

1 after the dust emissions developed?

2 DR. DICKEY: That is not consistent with your question.  
3 Your previous question was different. It was about the  
4 development of mitigation measures. The development of  
5 mitigation measures would take place before the dust  
6 emissions occurred.

7 MR. FLETCHER: Maybe I should reask the question.  
8 Maybe I misread what I wrote here.

9 DR. DICKEY: That is the way I understood your  
10 question, development of mitigation measures.

11 MR. FLETCHER: Let me just reask it. Problem  
12 assessment and mitigation implementation would occur after  
13 dust emissions develop; is that correct?

14 DR. DICKEY: Right.

15 MR. FLETCHER: And approximately how long after?

16 DR. DICKEY: Until there is a problem to assess, you  
17 can't assess it. That is simple logic. So it is not  
18 necessarily long after. Put a moderate program in place and  
19 dust begins to blow, you perceive it. So that assessment  
20 begins with the problem.

21 MR. FLETCHER: Do you have any -- Strike that.

22 Just a moment before you told me there was some  
23 obstacles to developing and implementing mitigation measures  
24 for the Sea; is that correct?

25 DR. DICKEY: Absolutely.

1           MR. FLETCHER: So it could take some time to implement  
2 mitigation measures after dust emissions develop; is that  
3 correct?

4           DR. DICKEY: Yes, it would take some time, but not  
5 necessarily because of those obstacles.

6           MR. FLETCHER: Why would it take time?

7           DR. DICKEY: It would take time because if I ask you to  
8 step out and step back into the room, it would take you  
9 time. If I asked you to go out and construct a dust  
10 mitigation project on the Salton Sea, I assume it would take  
11 you time as well. All things take time.

12          MR. FLETCHER: Do you know how many years it will take  
13 to implement some of the -- to complete the implementation  
14 of mitigation measures at Owens Lake?

15          DR. DICKEY: Do I know how long it will take?

16          MR. FLETCHER: Yes.

17          DR. DICKEY: I know what is specified in regulatory  
18 documents. I can't read future otherwise.

19          MR. FLETCHER: How long is that?

20          DR. DICKEY: It is specified that the State  
21 Implementation Plan schedules completion for 2006.

22          MR. FLETCHER: So it is on the order of years that it  
23 takes to implement these mitigation measures?

24          DR. DICKEY: We are talking about the Owens Lake,  
25 right?

1 MR. FLETCHER: Yes, we're talking about Owens Lake.

2 DR. DICKEY: At Owens Lake the regulatory documents  
3 requires it be complete by year 2006.

4 MR. FLETCHER: If dust emission problems develop and  
5 mitigation measures take several years to implement, I'm  
6 asking you to assume those two things, would sea levels be  
7 held constant while mitigation measures are developed?

8 DR. DICKEY: Run through that again, please.

9 MR. FLETCHER: If dust emission problems develop and  
10 the time line for implementing mitigation measures is  
11 several years, will Sea levels be held constant while the  
12 mitigation measures are implemented to avoid further dust  
13 problems?

14 DR. DICKEY: There is really not -- the Sea level plans  
15 are presented in other parts of the document. I don't know  
16 the answer to that question. Depends on when they -- when  
17 these hypothetical problems develop, I suppose. And --  
18 that's enough.

19 MR. FLETCHER: I want to look at one more thing on Page  
20 3-53. Again, the first full paragraph and the second  
21 sentence.

22 It says up to an estimated 16,000 acres of shoreline  
23 could be exposed between 2035 and the end of the project  
24 term as a result of full implementation of the project, of  
25 the proposed project. Now, the Draft EIR/EIS said up to

1 50,000 acres could be exposed by the proposed project.

2 Why is the difference?

3 DR. DICKEY: This is a hydrology question. I'm going  
4 to defer.

5 MS. HARNISH: The difference is the implementation of  
6 the Salton Sea Habitat Conservation Strategy.

7 MR. FLETCHER: As I understand it, after 2035 or  
8 actually after 2030 --

9 MS. HARNISH: Right.

10 MR. FLETCHER: -- water would no longer be supplied to  
11 the Sea under that strategy; is that correct?

12 MS. HARNISH: That's correct.

13 MR. FLETCHER: Go ahead.

14 MS. HARNISH: Go ahead and ask your question.

15 MR. FLETCHER: Is the difference between 16,000 acres  
16 of exposed shoreline and 50,000 acres of exposed shoreline  
17 merely an artifact of postponing the date at which inflow  
18 reductions will begin by 20-odd years?

19 MS. HARNISH: It is. And it also assumes following.

20 MR. FLETCHER: And it assumes following throughout the  
21 project term?

22 MS. HARNISH: That's right.

23 MR. FLETCHER: No more questions.

24 Thank you.

25 CHAIRMAN BAGGETT: Thank you.

1 Mr. Yates.

2 MR. YATES: Thank you, Mr. Chairman.

3 ---oOo---

4 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

5 BY NATIONAL AUDUBON SOCIETY - CALIFORNIA

6 BY MR. YATES

7 MR. YATES: My name is Bill Yates. I am here on behalf  
8 of National Audubon Society. I just have some questions  
9 primarily about the Habitat Conservation Strategy.

10 The changes that we are talking about are changes to  
11 the HCP and to the air quality section, as I recall, to the  
12 Final EIR.

13 But, Ms. Harnish, don't we have a change in the project  
14 description also?

15 MS. HARNISH: I think you need to be more specific. I  
16 don't believe we do other than in the change in the  
17 components of the HCP.

18 MR. YATES: Isn't the component of the project that HCP  
19 is that project? You're describing it as a component of the  
20 project.

21 MS. HARNISH: Overall that part of the project  
22 description is refined.

23 MR. YATES: I think as your counsel pointed out the  
24 lead agency, Imperial Irrigation District, for California  
25 Environmental Quality Act has certified the EIR; is that

1 correct?

2 MS. HARNISH: That's correct.

3 MR. YATES: Did they make any feasibility findings  
4 regarding the project?

5 MS. HARNISH: No, they did not.

6 MR. YATES: In the discussion that's occurred before me  
7 and also in the -- at Page 3-38, there does seem to be  
8 confusion among those of us asking the questions as to what  
9 is going to supply the water for this Habitat Conservation  
10 Plan Strategy. And at 3-38 could you read the first  
11 sentence of that under the subheading water sources?

12 MS. HARNISH: Mitigation water sources to offset  
13 project related inflow reductions could be acquired by IID  
14 by fallowing Imperial Valley or by using any other legally  
15 permissible water provided to IID for this purpose by other  
16 parties to the Quantification Settlement Agreement by state  
17 or federal agencies or by any other third parties willing to  
18 contribute to the mitigation effort or any combination of  
19 the foregoing.

20 MR. YATES: So, there is no water source identified for  
21 the HCP at this time?

22 MS. HARNISH: The source assessed in the EIR/EIS is  
23 fallowing.

24 MR. YATES: That is what you assessed.

25 MS. HARNISH: That's right.

1           MR. YATES: Is there an identified source? Can we say  
2 today where this water is coming from?

3           MS. HARNISH: I refer to Dave Christophel who authored  
4 the --

5           MR. CHRISTOPHEL: It is not specific with regard to a  
6 source.

7           MR. YATES: Mr. Christophel, also at Page 3-39 does it  
8 also say the use of water obtained by IID would probably  
9 require additional environmental review?

10          MR. OSIAS: Objection. That's an incomplete  
11 statement.

12          CHAIRMAN BAGGETT: Restate.

13          MR. OSIAS: You left out from outside Imperial  
14 Valley.

15          MR. YATES: With that amendment to my question.

16          MR. OSIAS: For clarity, would you read the whole  
17 sentence.

18          MR. YATES: Could I just read the sentence on Page 3-39  
19 and ask you if this is not correct?

20                 The use of water obtained by IID from sources outside  
21 the Imperial Valley could require appropriate subsequent  
22 environmental review?

23          MR. CHRISTOPHEL: That is what it says.

24          MR. YATES: In the air quality section, 3.9, there is  
25 discussion here also about the change mitigation strategy or

1 the additional mitigation strategy provided is also hinged  
2 to the implementation of the Salton Sea Habitat Conservation  
3 Strategy.

4 Ms. Harnish, doesn't this -- the assumption is water  
5 will be provided?

6 MS. HARNISH: Is that a question?

7 MR. YATES: Yes.

8 MS. HARNISH: The assumption is water will be provided,  
9 yes.

10 MR. YATES: The lead agency has not made a decision on  
11 where that water is going to be provided; is that correct?

12 MS. HARNISH: I guess, I suppose that is correct. They  
13 haven't made a project decision. So when they make a  
14 project decision, you know, they'll make findings about all  
15 the mitigations including -- and a level of specificity  
16 would be required.

17 MR. YATES: As you pointed out earlier, this is really  
18 a component of the project itself; is it not?

19 MS. HARNISH: Yes, it is.

20 MR. YATES: So we have -- is this -- are you familiar  
21 with the definition of feasible under the California  
22 Environmental Quality Act?

23 MS. HARNISH: Why don't you refresh my memory.

24 MR. YATES: Feasible means capable of being  
25 accomplished in a successful manner within a reasonable

1 period of time, taking into account economic, environmental,  
2 social and technological factors.

3 Are you familiar with the Imperial Irrigation  
4 District's opposition to fallowing?

5 MS. HARNISH: Somewhat, yes. I mean, I am familiar  
6 with it.

7 MR. YATES: I would be surprised if you were not.

8 In that regard is there also an agreement between San  
9 Diego County Water Agency and Imperial Irrigation District  
10 that essentially prohibits fallowing?

11 MS. HARNISH: Yes, I am familiar with that. And this  
12 EIR/EIS states an amendment to that agreement would be  
13 required if fallowing is implemented, either for creating  
14 water for transfer or mitigation.

15 MR. YATES: Doesn't that get to a question of  
16 feasibility?

17 MS. HARNISH: Perhaps. I mean, if there are -- if  
18 amendments are made, then it is feasible.

19 MR. YATES: Is the Water Board a responsible agency in  
20 this proceeding?

21 MS. HARNISH: Yes.

22 MR. OSIAS: Objection. She said yes. That is all  
23 right. Withdraw my objection.

24 MR. YATES: Are you familiar with the difference  
25 between responsible and lead agencies, being the project

1 manager of a significant EIR/EIS?

2 MS. HARNISH: Yes.

3 MR. YATES: Do you believe that the responsible agency  
4 can make a decision on the feasibility of a project before  
5 the lead agency?

6 MS. HARNISH: Do you mean prior to the lead agency?

7 MR. YATES: Yes, before the lead agency makes a  
8 decision.

9 MS. HARNISH: Repeat that question.

10 MR. YATES: Do you believe that the responsible agency  
11 can make a decision on the feasibility of the project before  
12 the lead agency makes that decision?

13 MS. HARNISH: I don't think I have an answer for that.

14 MR. YATES: I believe that is all I have.

15 CHAIRMAN BAGGETT: Thank you.

16 Why don't we take ten minutes and we will come back  
17 with Salton Sea. I assume nobody is here from Sierra Club  
18 and PCL.

19 We'll come back with Salton and the Tribes aren't here,  
20 and we'll do San Diego.

21 Recess for ten.

22 (Break taken.)

23 CHAIRMAN BAGGETT: Back on the record with Salton Sea.

24 ----oOo----

25 //

1 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

2 BY SALTON SEA AUTHORITY

3 BY MR. KIRK

4 MR. KIRK: For the two of you who I haven't met, I am  
5 Tom Kirk. I represent the Salton Sea Authority.

6 I think we will start off with Ms. Harnish, following  
7 up on some questions that were just asked of you.

8 Is it true that the one reason for moving from HCP1 to  
9 HCP2 and retaining that, refining it, is that HCP2 provides  
10 a more practical mitigation strategy, a more implementable  
11 one?

12 MS. HARNISH: As compared to the HCP1?

13 MR. KIRK: Correct.

14 MS. HARNISH: Yes, HCP1 was not considered to be  
15 permissible. And HCP2, now known as the Salton Sea Habitat  
16 Conservation Strategy, is.

17 MR. KIRK: Do you consider HCP2 or now HCP to be  
18 potentially permissible and practicable?

19 MS. HARNISH: Yes.

20 MR. KIRK: Did you hear the responses that Dr. Dickey  
21 gave to Mr. Fletcher related to mitigation measures to deal  
22 with air quality impacts?

23 MS. HARNISH: Yes.

24 MR. KIRK: Do you remember Dr. Dickey testifying that  
25 the two mitigation measures that are used at Mono and Owens

1 Lake respectively filling the lake and using shallow pools  
2 would not be practicable at the Salton Sea?

3 MS. HARNISH: Yes, yes.

4 MR. KIRK: As project manager, you reconciled various  
5 components of the document in the resource areas; is that  
6 correct?

7 MS. HARNISH: Yes.

8 MR. KIRK: Ms. Harnish, on the one hand you are telling  
9 me that using mitigation water is practicable for habitat  
10 related reasons, and on the other hand you are telling me  
11 that using mitigation water for air quality purposes is not  
12 practicable?

13 MS. HARNISH: John's going to --

14 DR. DICKEY: Mischaracterized my testimony. My  
15 testimony was with regard to the feasibility of dust  
16 mitigation measures. That's true. What the question was  
17 whether or not there might be -- I don't recall the exact  
18 wording -- but whether or not there might be mitigation  
19 measures that wouldn't be feasible or would be feasible.  
20 The answer is of course.

21 If you have limiting resources that are critical to  
22 that dust mitigation measure, then it might not be feasible.  
23 And as an example I gave water supply; it is a critical  
24 resource. If it weren't available, then that mitigation  
25 measure would not be feasible. I was not stating that water

1 supply was limiting and, therefore, at Salton Sea these  
2 mitigation measures can't be used. I was not making that  
3 conclusion.

4 MR. KIRK: Dr. Dickey, you are claiming that you did  
5 not just testify in response to Mr. Fletcher that filling  
6 the lake and providing shallow pools was not practicable?

7 DR. DICKEY: No -- yes, I am claiming that. What I am  
8 claiming is that when asked about whether or not measures  
9 applied in the Owens Valley would be feasible, for example,  
10 at Salton Sea, I simply said if there is inadequate water  
11 supply, that these water requiring measures would not be  
12 feasible. It was a would would.

13 MR. KIRK: Ms. Harnish, is there an adequate supply of  
14 water to fulfill the requirements of HCP2? We'll call it  
15 HCP2. When I say it I'll mean, unless I state otherwise,  
16 HCP2. When I say HCP2, I mean HCP in the now Final EIR.

17 Is that fair enough?

18 MS. HARNISH: That is fair.

19 MR. KIRK: Do you believe there is a water supply  
20 available to meet the commitment of HCP or HCP2?

21 MS. HARNISH: We have assessed the use of fallowing as  
22 the water supply. I can't say that it will be available.  
23 We have assessed that has a potential source of the water.

24 MR. KIRK: It may not be available?

25 MS. HARNISH: If it is approved by the IID Board, it

1 would be made available.

2 MR. KIRK: But the project would have to be approved?

3 MS. HARNISH: Right. If it is approved and that HCP is  
4 approved as part of that project, then that water would be  
5 made available.

6 MR. KIRK: Could water be made available to mitigate  
7 air quality impacts?

8 MS. HARNISH: Providing water and maintaining the  
9 elevation of the Sea is in here as Step 4B. That is after  
10 exhausting the previous steps above. If there is still --  
11 if there is still air quality impacts, and that is  
12 considered to be feasible at that point, then that could be  
13 implemented.

14 MR. KIRK: Thank you.

15 Mr. Christophel, I gather you have spent the most time  
16 of these witnesses working directly with Fish and Game and  
17 Fish and Wildlife Service on the HCP?

18 MR. CHRISTOPHEL: I think that is a fair statement.

19 MR. KIRK: For better or worse, right?

20 MR. OSIAS: Is that a question?

21 MR. KIRK: Could be. Probably one that he might not  
22 want to answer.

23 MR. OSIAS: I would object.

24 MR. KIRK: Mr. Christophel, you testified under cross  
25 by Mr. Rossmann with Imperial County that one of the major

1 changes between the Draft and Final with respect to HCP No.  
2 is that in the Draft mitigation water would be provided  
3 for the duration of the project and now it is being provided  
4 up to 2030?

5 MR. CHRISTOPHEL: I believe that is correct.

6 MR. KIRK: Did Fish and Wildlife Service between the  
7 publication of the Draft and the preparation of the Final  
8 EIR demand that your mitigation requirement be changed from  
9 75 years to 30 years?

10 MR. CHRISTOPHEL: No.

11 MR. KIRK: Did you receive comments from anybody that  
12 indicated that HCP2 should be changed in a one-to-one  
13 mitigation to a mitigation based on a 30-year horizon?

14 MR. CHRISTOPHEL: Fish and Game and Fish and Wildlife  
15 Service were involved in the discussions to develop the  
16 Approach No. 2. They participated in the decision to move  
17 to 2030.

18 MR. KIRK: Actually, that wasn't my question. My  
19 question was: Did you receive any comments from any  
20 individual or agency indicating that HCP2 ought to be  
21 changed from a one-to-one strategy to one based on this  
22 30-year horizon?

23 MR. OSIAS: Objection. I'm not sure that one to one  
24 and 30 year are inconsistent. Before the 30-year horizon is  
25 reached are you suggesting they are?

1           CHAIRMAN BAGGETT:  Restate.

2           MR. KIRK:  Did you receive any comments that suggested  
3           your commitment for mitigation water ought to be reduced  
4           from up to 75 years to up to 30 years?

5           MR. CHRISTOPHEL:  Could you be more specific about  
6           where those comments would come from?  Are you referring to  
7           the formal comments on the EIR/EIS?

8           MR. KIRK:  Yes.

9           MR. CHRISTOPHEL:  I don't recall any.

10          MR. KIRK:  Whose idea was it?  Whose idea was it to  
11          reduce the mitigation requirement from a 75-year period down  
12          to a 30-year period, maybe a 60 percent reduction in  
13          mitigation requirement?

14          MR. CHRISTOPHEL:  I don't recall it being a decision to  
15          move from one to the other.  We began with the premises what  
16          we wanted to accomplish was to mitigate the effects of the  
17          project and look at those relative to baseline.  In doing  
18          that and using or addressing the uncertainty that I  
19          described earlier, we arrived at 2030 as the time period  
20          that would mitigate those impacts.

21          MR. KIRK:  That didn't come to you during the  
22          preparation of the Draft EIR, that was subsequent to the  
23          issuance of the Draft EIR?

24          MR. CHRISTOPHEL:  That was subsequent to issuance of  
25          the Draft EIR, and in the Draft EIR the approaches were left

1 intentionally open. They were not -- there was not a lot of  
2 details associated with those.

3 MR. KIRK: Under HCP2 in the Draft EIR, there was, as  
4 you testified, a one-to-one replacement provision for the  
5 term of the project, correct?

6 MS. HARNISH: I think it would be useful to actually  
7 look at the way it is worded.

8 MR. KIRK: I am just referring to Mr. Christophel's  
9 testimony earlier. You indicated that -- in your testimony  
10 you indicated that the commitment was for the duration of  
11 the project?

12 MR. CHRISTOPHEL: I wasn't referring specifically to  
13 what was written in the Draft HCP under Approach 2.

14 MR. KIRK: What were you referring to?

15 MR. CHRISTOPHEL: I don't recall specifically what the  
16 question was. I do know that was not the question that I  
17 was answering. I think it would be helpful to look at that,  
18 that particular page.

19 MR. KIRK: Could we refer to Page 4-31 of the Errata?  
20 Actually, I will have to apologize in advance. The hard  
21 copy I received from CH2MHill, my page numbers are about two  
22 page numbers off of everybody else's, I gather. It might  
23 take me a minute to track it down.

24 MS. HARNISH: I assure you, Tom, it wasn't  
25 intentional.

1           MR. KIRK:  What I am referring to is my Page 4-31, the  
2 header -- Section --  
3           MR. CHRISTOPHEL:  Are you in the Final document now?  
4           MR. KIRK:  Yes, the Errata.  
5           MS. HARNISH:  Are you looking at a table?  
6           MR. KIRK:  I am actually looking to a section entitled  
7 HCP Salton Sea Portion Use of Conserved Water as Mitigation.  
8 If history is any lesson, you might be on 4-32 or 4-33.  
9           MR. OSIAS:  Are you in a table?  
10          MR. KIRK:  I am not in a table.  
11          MS. HARNISH:  Is there a section number?  
12          MR. KIRK:  If I may.  It should be one page or two of  
13 Page 4-31.  
14          MS. HARNISH:  Can we see?  
15          MR. ROSSMANN:  That is on Page 4-53.  
16          MR. KIRK:  I'm 20 pages off.  It must get worse as the  
17 document goes on.  
18          MS. HARNISH:  It is best to go by what is in the Final  
19 EIR, not what was submitted.  There was some changes.  For  
20 example, the Executive Summary Table was added at the  
21 beginning of the Errata in the Final.  So that set off all  
22 the page numbering between what you received and what is in  
23 the document.  
24          MR. KIRK:  We will labor through this.  I apologize.  
25          Page 4-53, titled Errata, then HCP Salton Sea A Portion

1 Use of Conserved Water as mitigation.

2 Mr. Christophel, did that read -- do you have that in  
3 front of you now?

4 MR. CHRISTOPHEL: I do.

5 MR. KIRK: Did that read Approach 2 of the Salton Sea  
6 Habitat Conservation Strategy -- not sure if there is a --  
7 looks like there is a T there, Ms. Harnish, it's floating.

8 MS. HARNISH: Yes.

9 MR. KIRK: We'll just say Approach 2 entails generating  
10 mitigation water. So there would be no change in inflow to  
11 the Salton Sea with implementation of water conservation and  
12 transfer programs.

13 Is that correct? That is the way it read in the Draft  
14 EIR.

15 Clarify, Page 4-53.

16 Was it your recollection in the old HCP2, the  
17 commitment was to provide mitigation water for the duration  
18 of the project, correct?

19 MR. CHRISTOPHEL: I don't think it was that specific in  
20 the Draft HCP. What the Draft HCP did was to identify two  
21 ways to mitigate impacts to the Salton Sea. One was the use  
22 of ponds. The other was the use of water to the Sea.

23 Again --

24 MR. KIRK: Here on Page 4-53 as is indicated, there  
25 would be no change in inflow to the Salton Sea with

1 implementation of the water conservation and transfer  
2 programs; is that correct?

3 MR. CHRISTOPHEL: That appears to be correct.

4 MR. KIRK: Under HCP2 in the Draft EIR, it appeared the  
5 intent was to make up for inflow reductions that occurred  
6 through the implementation of the project, correct?

7 MR. CHRISTOPHEL: That is correct. Again, the approach  
8 was to mitigate impacts on fish eating birds. So the intent  
9 was to supply water to the Sea to perform that function.

10 MR. KIRK: There was no -- the HCP2 in the Draft EIR  
11 did not tie itself to the projection in any way, the  
12 projection of salinity trends or elevation trends, correct?

13 MR. CHRISTOPHEL: Could you restate that, please?

14 MR. KIRK: HCP2 in the Draft EIR did not tie its  
15 implementation to salinity or elevation trends?

16 MR. CHRISTOPHEL: I don't believe it did. I don't  
17 think it was that specific.

18 MR. KIRK: But HCP2, now HCP in the Final EIR, does?

19 MR. CHRISTOPHEL: Yes.

20 MR. KIRK: So those salinity trends and elevation  
21 trends are even more important to the implementation of the  
22 project than they were under the Draft EIR; is that  
23 correct?

24 MR. CHRISTOPHEL: I am not sure I characterize it that  
25 way. Again, the intent of the original Draft was to

1 identify another approach to mitigating those impacts. The  
2 current HCP puts on that layer of detail.

3 MR. KIRK: You would agree that the salinity and  
4 elevation trajectories are more important to implementation  
5 of the HCP in the Final EIR than they were in the Draft EIR  
6 under HCP2?

7 MR. CHRISTOPHEL: Again, I'm not sure I would agree  
8 with that. The HCP, the current version of HCP, provides  
9 that level of detail. I am not suggesting that they're more  
10 important than they would have been in the draft document.

11 MR. KIRK: Dr. Eckhardt, you've provided additional  
12 information on the baseline and sensitivity analysis,  
13 correct, in the FEIR and response to comments, Master  
14 Response to Comments?

15 DR. ECKHARDT: Yes. We provide further clarification  
16 on the baseline.

17 MR. KIRK: You provided further clarification about the  
18 entitlement enforcement in particular?

19 DR. ECKHARDT: All of the aspects of the baseline.

20 MR. KIRK: Including entitlement enforcement?

21 DR. ECKHARDT: Including.

22 MR. KIRK: On page, my Page 3-23, might be 3-25, I will  
23 double-check, is a section entitled Entitlement Enforcement.

24 MS. HARNISH: That is on 3-23.

25 MR. KIRK: I've gotten lucky.

1 Thank you.

2 Page 3-23, Entitlement Enforcement, John.

3 MR. OSIAS: Excuse me, could you refer to him as Dr.  
4 Eckhardt along with the rest of them because there is equal  
5 dignity?

6 MR. KIRK: He probably deserves more. I know John very  
7 well, outstanding individual.

8 Thank you.

9 Dr. Eckhardt, Page 3-23. I may have a hard time  
10 identifying it on the page, but midway through my first  
11 paragraph I see a sentence there that reads "priorities one,  
12 two and three."

13 Do you see that sentence?

14 DR. ECKHARDT: Yes. I see priorities one, two and  
15 three.

16 MR. KIRK: That reads "priorities one, two and three  
17 including IID and CVWD have historically diverted an average  
18 of 3.91 million acre-feet which exceeds their 3.85 MAFY  
19 apportionment."

20 Does it read that way?

21 MR. OSIAS: Mr. Chairman, this is apparently a start of  
22 questions about the comments. There has been no change in  
23 the baseline. I guess I don't oppose his confirming that he  
24 has the same copy now, so the sentence reads the same. The  
25 questioning about the response to comments.

1           CHAIRMAN BAGGETT: Noted. Could you answer this  
2 question and we'll --

3           DR. ECKHARDT: The question was: Does it read that  
4 way? Yes, it does.

5           MR. KIRK: With respect to questions on the baseline,  
6 Mr. Chairman, we have heard that the HCP now relies on the  
7 baseline in terms of its implementation, that the HCP, the  
8 provision of makeup water, is tied to a projection of  
9 salinity and elevation trends. That was not the case under  
10 the Draft EIR. That is new information that ought to be  
11 bedded today.

12          MR. OSIAS: The baseline was the subject of at least a  
13 day and a half of cross-examination. It's not changed at  
14 all. The only thing in this document is responses to  
15 comments saying what about this, what about that. Those  
16 responses were made, and it did not change. The HCP, as Mr.  
17 Christophel has said, was a concept HCP in the Draft, said  
18 we will mitigate for the project impacts only with makeup  
19 water. It's been refined and changed. It is not more  
20 important now than it was then, although Mr. Kirk tried  
21 twice to get him to say that. He did not. So I think it is  
22 outside the scope of this proceeding.

23          CHAIRMAN BAGGETT: I tend to agree unless you can give  
24 me an opportunity more to persuade why -- we did spend well  
25 over a day on this issue before.

1           MR. KIRK: We do have new information on this issue  
2 today. New information has been provided in the Master --  
3 at the Master Response to Comments and, in fact, the Errata  
4 sheets related to the baseline. That information was not  
5 available to us in the first part of Phase II of the  
6 hearing.

7           CHAIRMAN BAGGETT: You are free to ask based on if  
8 there is new information, refer to it in the Final, then you  
9 are free to discuss that. But to go back and hold a  
10 discussion of the baseline again --

11           MR. OSIAS: The information, Mr. Chairman, is in  
12 response to comments saying, "Did you do this?" Or "When  
13 did you do that?" It didn't produce a changed EIR. The  
14 debate is whether the baseline is correct or not. The  
15 environmental community has had cross-examination and an  
16 opportunity to present rebuttal witnesses already. This is  
17 not new information with respect to a change in the project  
18 or in the mitigation program. It's neither.

19           CHAIRMAN BAGGETT: Mr. Rossmann.

20           MR. ROSSMANN: Well, a little rule of reason, perhaps,  
21 your Honor, because I think Mr. Kirk has a good point. If  
22 Mr. Osias is suggesting that only what is literally in  
23 Chapter 4, Errata, is a change in the EIR, I think that is  
24 incorrect.

25           CHAIRMAN BAGGETT: Agree.

1           MR. ROSSMANN: Because the EIR includes the response to  
2           comments. I think all of us have learned something in those  
3           response to comments that is information that was not  
4           previously provided. On the other hand we could go and do  
5           the whole thing over again.

6           MR. OSIAS: Every comment is new.

7           MR. ROSSMANN: I guess, I think Mr. Kirk is perhaps  
8           being a little more aggressive than I was. And one of us  
9           ought to have a chance to try to explore this line of  
10          authority, at least find out how that change, how this new  
11          information about baseline -- I was going to save it for my  
12          brief. I don't know what he is up to. He may have more  
13          perceptions on this. To just say that it is not in Chapter  
14          4 Errata or not part of what these witnesses testified as to  
15          how they changed the EIR, really does confine it. And I  
16          think all of us will be the poorer if we don't explore it,  
17          what this new information provides.

18          CHAIRMAN BAGGETT: I appreciate that.

19          Mr. Osias.

20          MR. OSIAS: Thank you.

21          The fact of text being newly present can't be the test  
22          for change because every comment in every response was not  
23          in the Draft. Second, there are no new assumptions in the  
24          baseline in terms of information. It is exactly the same  
25          baseline. There is merely a discussion of why those

1 assumptions didn't change.

2 Information, which is how the question was posed and I  
3 think how you wanted to parse it maybe, is there new  
4 information has to mean more is there new text in terms of  
5 the give and take about why the assumptions were made before  
6 or are the same. I don't believe there is any new factual  
7 information.

8 MR. KIRK: Mr. Chairman, if I do identify new  
9 information, new factual information, in the Master  
10 Response, I will limit my questions to that. In fact, I  
11 think we will find that. When Mr. Osias claims that only  
12 the changes, only substantive changes are found in the  
13 Errata sheet or something to that effect, in fact, what we  
14 have is a clarification of information that was never  
15 provided in the Draft EIR.

16 CHAIRMAN BAGGETT: I guess, so overrule and sustain  
17 partially both. Continue the line of questioning, but I can  
18 appreciate we aren't following the formal rules of evidence  
19 in a traditional court. I will allow you some slack, if you  
20 will, to explore some of the changes. But if you could just  
21 make them very narrow and try to stick with and stay in line  
22 with the comments as submitted in the changes to the Final  
23 it would be appreciated.

24 So why don't you continue with that.

25 MR. KIRK: Dr. Eckhardt, page -- my Page 3-24, the

1 second paragraph of entitlement enforcement. And does your  
2 second paragraph start on Page 3-23?

3 DR. ECKHARDT: My second paragraph starts on -- I don't  
4 understand your question.

5 MR. KIRK: The text you're looking at, does the second  
6 paragraph under Entitlement Enforcement that we are reading  
7 from on Page 3-23, does the second paragraph begin on Page  
8 3-23 or 3-24?

9 DR. ECKHARDT: It begins on 3-23.

10 MR. KIRK: Looks like we are tracking here.

11 On Page 3-24 there is in that second paragraph again,  
12 second paragraph of the section, there is a sentence that  
13 begins with "It was assumed."

14 Do you see that sentence?

15 DR. ECKHARDT: Yes.

16 MR. KIRK: Would you mind reading just that sentence  
17 for me?

18 DR. ECKHARDT: It was assumed that IID and its  
19 farmers could increase efficiency using  
20 temporary, nonstructural operations  
21 improvements rather than reduce yield to  
22 accommodate this relatively small reduction (.059  
23 compared to a total of 3.43 MAFY) in diversion.  
24 (Reading.)

25 MR. KIRK: So for entitlement enforcement, which, if we

1 remember correctly, that was included in your baseline  
2 projection; is that correct?

3 DR. ECKHARDT: That's correct.

4 MR. KIRK: And entitlement enforcement then would be  
5 borne by IID and it would involve these nonstructural and/or  
6 operational changes by farmers; is that correct?

7 DR. ECKHARDT: That is not correct.

8 MR. KIRK: Could you correct me, please?

9 DR. ECKHARDT: Yes. If you would go to Page 3-30,  
10 which follows the table, and read under the Footnote 1.

11 MR. KIRK: Under Footnote 1 it indicates CVWD and IID  
12 farmers would potentially reduce their water use under  
13 entitlement enforcement?

14 DR. ECKHARDT: That's correct. The statement we read  
15 before under the other page is actually in error. The  
16 footnote on Page 3-30 is correct.

17 MR. KIRK: Should that change the hydrological  
18 assumptions under the baseline, Dr. Eckhardt?

19 DR. ECKHARDT: Should what?

20 MR. KIRK: The error in assuming that CVWD as well as  
21 IID would be responsible for reducing their water use under  
22 entitlement enforcement, wouldn't that change the baseline?

23 DR. ECKHARDT: No. We've always assumed that CVWD  
24 would be responsible or as it states in Footnote 1, CVWD,  
25 IID and their farmers would be responsible for any

1 curtailment or any enforcement of the entitlement, the ag  
2 entitlement of 3.85.

3 MR. KIRK: In which proportion? Does all of it? Most  
4 of it? Is it borne by CVWD or IID? Or do you know?

5 DR. ECKHARDT: That would depend on the situation.

6 MR. KIRK: Do you have an average?

7 DR. ECKHARDT: I do not have an average.

8 MR. KIRK: If, in fact, it is borne by CVWD, isn't  
9 there makeup water that would be provided by MWD under the  
10 1889 Implementation Agreement?

11 DR. ECKHARDT: No.

12 MR. KIRK: Why not?

13 MR. OSIAS: Objection. Just to save time and for the  
14 record, it is the 1989 Approval Agreement.

15 MR. KIRK: Thank you.

16 DR. ECKHARDT: Question.

17 MR. KIRK: Why wouldn't that agreement provide makeup  
18 water to CVWD in the event CVWD was curtailed under  
19 entitlement?

20 DR. ECKHARDT: My answer was to the Implement  
21 Agreement. When you say Approval Agreement, the answer is,  
22 yes, it would. It could provide some makeup water, yes.

23 MR. KIRK: Wouldn't that change the baseline?

24 DR. ECKHARDT: There could potentially be some changes,  
25 which is something that I could go through here if you would

1       like me to show you how those changes could actually be  
2       made.

3               MR. KIRK:  If you could just answer a couple of  
4       questions related to that.  If, in fact, CVWD is the junior  
5       right holder under priorities one, two and three; is that  
6       correct?

7               DR. ECKHARDT:  That's correct.

8               MR. KIRK:  Why wouldn't you assume that CVWD would take  
9       the burden of entitlement enforcement?

10              DR. ECKHARDT:  Again, it is going to depend on the  
11       exact situation.

12              MR. KIRK:  In which circumstance would IID be required  
13       to reduce its water use under entitlement enforcement?

14              DR. ECKHARDT:  Like previous proceedings, if IID is  
15       shown not to be beneficially using their water.

16              MR. KIRK:  Isn't that a new action, not a part of the  
17       baseline, Dr. Eckhardt?

18              DR. ECKHARDT:  Isn't what a new action?

19              MR. KIRK:  If there is a new proceeding, a new order, a  
20       new requirement.

21              DR. ECKHARDT:  I would assume that is a possibility,  
22       yes.

23              MR. KIRK:  So should that be a part of the baseline?

24              DR. ECKHARDT:  Should what be part of the baseline?

25              MR. KIRK:  Entitlement enforcement affecting IID?

1 DR. ECKHARDT: If there is an order to IID, yes.

2 MR. KIRK: I am asking a baseline. An order implies a  
3 new action, a new discretion by some agency?

4 MR. OSIAS: Objection. Action doesn't necessarily  
5 imply -- objection to the form of the question as  
6 ambiguous. If he is using action in the environmental  
7 sense, that may mean discretion. I thought he was using  
8 action in the enforcement sense like somebody sues.

9 CHAIRMAN BAGGETT: Could you clarify?

10 MR. KIRK: I was, in fact, asking in the environmental  
11 sense, in the CEQA sense, a discretion action by a lead  
12 agency.

13 DR. ECKHARDT: If, in fact, a lead agency makes a  
14 discretionary action, they essentially could be subject to  
15 NEPA and CEQA compliance.

16 MR. KIRK: So it is your understanding under  
17 entitlement enforcement that at least CVWD could be  
18 impacted, correct?

19 DR. ECKHARDT: Correct.

20 MR. KIRK: CVWD, it is your understanding that under  
21 the 1989 Approval Agreement have a source to backfill some  
22 reductions of water use, correct?

23 DR. ECKHARDT: That's my understanding.

24 MR. KIRK: It's your testimony that that could, in  
25 effect, affect the baseline?

1 DR. ECKHARDT: Yes, like many factors affect the  
2 baseline.

3 MR. KIRK: When, in fact, you did the sensitivity  
4 analysis, Dr. Eckhardt, wasn't this the most significant  
5 factor, entitlement enforcement? Didn't it account for the  
6 potentially greatest change in the baseline?

7 DR. ECKHARDT: First of all, I didn't necessarily do  
8 the sensitivity analysis. This is something that was done  
9 by the Bureau of Reclamation.

10 MR. KIRK: Thanks for the clarification on that.

11 DR. ECKHARDT: This is like lots of assumptions in that  
12 it is hard to separate out an assumption. If you are  
13 referring to the table, you could say, "Based on these  
14 assumptions used in sensitivity analysis, yes, it has the  
15 largest change."

16 MR. KIRK: In fact, a ten-year change, and that is not  
17 assuming entitlement force is not a part of the baseline,  
18 but assuming it is a third of an impact; is that correct?

19 DR. ECKHARDT: Rephrase the question.

20 MR. KIRK: I'll do that. I think I confused myself.

21 Dr. Eckhardt, Table 3.3-1, the sensitivity analysis  
22 that was run assumes that entitlement enforcement is a part  
23 of the baseline, but it has a third of an impact that it  
24 otherwise would have, thereabouts, a third of an impact,  
25 correct?

1 DR. ECKHARDT: For that particular sensitivity run,  
2 yes.

3 MR. KIRK: Under that assumption, there would be a  
4 ten-year difference in terms of when the Sea would reach 60  
5 parts per thousand; is that correct?

6 DR. ECKHARDT: There was a ten-year difference in the  
7 mean, yes, correct.

8 MR. KIRK: In fact, if the entitlement enforcement --  
9 if there was a 50,000 acre-foot backfill of CVWD, and CVWD  
10 was the one taking the brunt of this entitlement  
11 enforcement, the inflow to the Sea reduction could be 5- or  
12 6- or 7,000 acre-feet per year, correct?

13 DR. ECKHARDT: Are you asking me to assume there is a  
14 50-?

15 MR. KIRK: Yes.

16 DR. ECKHARDT: If there is an assumption that there  
17 could be a backfill of 50-, then I assume there could be a  
18 reduction.

19 MR. KIRK: Is it your understanding that the 1989  
20 Approval Agreement included a backfill of 50,000 acre-feet  
21 per year by MWD?

22 DR. ECKHARDT: That is not my understanding, no.

23 MR. KIRK: What is your understanding?

24 DR. ECKHARDT: My understanding is that there is a  
25 backfill agreement or section in that agreement and it is

1 shared between MWD, CVWD and PVID. And it is subject to  
2 several circumstances before it can happen.

3 MR. KIRK: The maximum amount that MWD would backfill  
4 is 50,000 acre-feet per year; is that correct?

5 DR. ECKHARDT: That is correct; that is my  
6 understanding, in any one year.

7 MR. KIRK: On Page 3-24, again, you say this paragraph  
8 or this sentence is in error, the assumption that IID would  
9 bear the brunt of entitlement enforcement. It could be IID  
10 and CVWD; is that correct?

11 DR. ECKHARDT: I assume, yes.

12 MR. KIRK: If it is IID, as this sentence indicates --

13 DR. ECKHARDT: I want to point out this sentence is in  
14 error.

15 MR. KIRK: I only know what I have here, Dr. Eckhardt.  
16 The other -- certainly you pointed out a footnote that  
17 perhaps is a little bit different.

18 If, in fact -- is there a case where IID would, in  
19 fact, be responsible for reducing its water use by about  
20 59,000 acre-feet under entitlement enforcement?

21 DR. ECKHARDT: You are asking me to assume that?

22 MR. KIRK: I am asking you if there is a -- is there a  
23 possibility, is there potential that IID would, in fact,  
24 have to do what this sentence indicates it has to; that is,  
25 reduce its water use by an average of 59,000 thousand

1 acre-feet per year because of entitlement enforcement?

2 DR. ECKHARDT: There probably are situations. One of  
3 which I can think of is according to the Approval Agreement  
4 IID could do that.

5 MR. KIRK: The way they would do it is, as this  
6 sentence indicates, is that correct, nonstructural operation  
7 improvements rather than reduce yield?

8 DR. ECKHARDT: It would be a farmer decision as to how  
9 to do it, yes.

10 MR. KIRK: How would the farmer know to do it?

11 DR. ECKHARDT: Know to do what?

12 MR. KIRK: How would the farmer know -- how would a  
13 farmer in the IID service area know that they had to reduce  
14 their use of water by 59,000 acre-feet per year?

15 DR. ECKHARDT: The same way IID would know, the Bureau  
16 would notify them.

17 MR. KIRK: Would IID notify the farmers?

18 DR. ECKHARDT: Possibly. I don't know how that would  
19 come into effect. I would assume there would be a  
20 notification.

21 MR. KIRK: Those farmers wouldn't have to implement any  
22 sort of on-farm conservation system, they could just do  
23 operational changes; is that correct?

24 DR. ECKHARDT: That's certainly one method, yes.

25 MR. KIRK: That is what this sentence indicates?

1 DR. ECKHARDT: That's correct.

2 MR. KIRK: This sentence indicates -- let's back up.

3 Are you aware that IID is a very efficient operation,  
4 correct, the farming in Imperial Irrigation District --  
5 there has been a lot of testimony how efficient IID is?

6 DR? ECKHARDT: Yes, I'm aware of that.

7 MR. KIRK: What this sentence indicates, and I  
8 understand you say the sentence is in error, the sentence  
9 indicates that IID's farmers can squeeze out 59,000  
10 acre-feet without doing anything other than operational  
11 changes; is that correct?

12 DR. ECKHARDT: I don't think it is exactly saying that.  
13 I think it is saying that they can do things as they do  
14 every year in their decisions in using water.

15 MR. KIRK: They wouldn't need to be paid for it; is  
16 that correct?

17 DR. ECKHARDT: They may or may not. In this case I  
18 think the assumption is they would not.

19 MR. KIRK: So IID's farmers could generate 59,000  
20 acre-feet under a baseline scenario and they are not getting  
21 paid for?

22 DR. ECKHARDT: You say they could?

23 MR. KIRK: Yeah.

24 DR. ECKHARDT: I don't know if they could. I'm  
25 assuming.

1 MR. KIRK: That is under your baseline.

2 DR. ECKHARDT: I said this sentence is in error and  
3 CVWD, some combination of CVWD and MWD could make this  
4 reduction. It could be all CVWD.

5 MR. KIRK: Ms. Harnish, do you have something?

6 MS. HARNISH: I think he misspoke. He said CVWD and  
7 MWD.

8 DR. ECKHARDT: I meant IID, not MWD.

9 MR. KIRK: 59,000 acres is a relatively small amount of  
10 water, correct? The point you make here under the --

11 DR. ECKHARDT: Where is that at?

12 MR. KIRK: You point out in parens at the end of that  
13 sentence, 59,000 acre-feet, .059 compared to a total of 3.43  
14 MFAY. The next paren you indicate a significant greater  
15 diversion reduction could not be accommodated solely  
16 through increased efficiency; is that correct?

17 DR. ECKHARDT: That is what it says, yes.

18 MR. KIRK: But 59,000 acre-feet would represent 60  
19 percent of the 1988 agreement with MWD, correct,  
20 thereabouts?

21 DR. ECKHARDT: Thereabouts.

22 MR. KIRK: MWD invested tens of millions of dollars to  
23 generate a hundred thousand acre-feet in 1988; is that  
24 correct?

25 MR. OSIAS: Mr. Chairman, 59,000 was identified in the

1 draft, the assumption that it would be priority three was in  
2 the Draft. The question of inflow to the Sea impacts and  
3 whether farmers get paid is irrelevant. The '88 agreement  
4 was fully discussed in the Draft. This is only his first  
5 topic. He started at 2:50 -- at 1:50.

6 MR. KIRK: I would have started had the witnesses been  
7 here.

8 CHAIRMAN BAGGETT: I would sustain the objection. You  
9 are going over stuff we've already been there. I'm trying  
10 to cut you some leeway here.

11 MR. KIRK: I appreciate that. I will move on.

12 You could understand, this is new information about how  
13 IID would generate 59,000 acre-feet of water.

14 CHAIRMAN BAGGETT: I would sustain the objection.  
15 We've been there.

16 MR. OSIAS: With this witness.

17 MR. KIRK: Let's turn to some figures that have been  
18 provided, new figures in the Final EIR. Figure 3.1-16.

19 DR. ECKHARDT: Page?

20 MR. KIRK: Not going to get a very good response from  
21 me on page.

22 MS. HARNISH: There is not a page number. It's the  
23 second figure after Page 4-139.

24 CHAIRMAN BAGGETT: Mike.

25 MS. HARNISH: There is not a page number, but it would

1 be Page 4-139, two pages after 4-137.

2 DR. ECKHARDT: What was the figure?

3 MS. HARNISH: 3.1-16.

4 MR. KIRK: Dr. Eckhardt, have you found it?

5 DR. ECKHARDT: Yes, we're looking at Figure 3.1-16.

6 MR. KIRK: Does that show the existing hydrological  
7 setting in Imperial Valley?

8 DR. ECKHARDT: Yes.

9 MR. KIRK: Does it show 1,149,000 acre-feet per year  
10 flowing to the Salton Sea?

11 DR. ECKHARDT: I assume you're adding all the numbers  
12 that are going to the Salton Sea. That is not added on my  
13 figure here.

14 MR. KIRK: I was adding those four or five numbers.  
15 That look about right?

16 DR. ECKHARDT: That looks about right.

17 MR. KIRK: If you -- again, clarification. 1,149,000  
18 acre-feet per year flowing to the Salton Sea under the  
19 existing setting. That is the historical set, how much  
20 water has been flowing in from the Imperial Valley based on  
21 12 years of data or whatever you used; is that correct?

22 DR. ECKHARDT: Yes, that is what it says, existing  
23 setting.

24 MR. KIRK: Could you turn to the baseline, the similar  
25 figure there, Figure 3.1-30? There I think the math might

1 be a little easier, Dr. Eckhardt. We have -- I show  
2 1,100,000 or 1.1 million acre-feet flowing into the Sea  
3 every year; is that correct?

4 DR. ECKHARDT: If my math is correct.

5 MR. OSIAS: Are you looking at the one that says  
6 Alternative 1?

7 MR. KIRK: Yes. Baseline, no project, Alternative 1.  
8 Baseline and no project is the same, is that correct,  
9 Ms. Harnish, for this circumstance?

10 MS. HARNISH: Yes, for this circumstance.

11 MR. KIRK: Dr. Eckhardt, my math look about right?

12 DR. ECKHARDT: Yes.

13 MR. KIRK: There is 49,000 acre-foot difference between  
14 the existing setting and the baseline; is that correct?

15 DR. ECKHARDT: Yes, based on those two figures.

16 MR. KIRK: For your modeling purposes didn't you assume  
17 that entitlement enforcement, all these other things would  
18 occur in this, in Imperial Valley? For modeling purposes  
19 you assumed that 59,000 acre-foot would be reduced into  
20 coming into the Imperial Valley and 56,000 acre-feet or  
21 thereabouts would be reduced going to the Salton Sea?

22 DR. ECKHARDT: State the question again now.

23 MR. KIRK: For modeling purposes with respect to  
24 entitlement information you assumed 56,000 acre-foot  
25 reduction of flow into the Salton Sea, and that would be

1 demonstrated in part on Figure 3.1-30?

2 DR. ECKHARDT: That's correct, in part.

3 MR. KIRK: Along with other changes --

4 DR. ECKHARDT: All the other changes.

5 MR. KIRK: You testified before, and I'm not going to  
6 go over it again, Mr. Chairman.

7 DR. ECKHARDT: Yes.

8 MR. KIRK: So it is a 49,000 acre-foot reduction in the  
9 baseline compared to the existing conditions; is that  
10 correct, if my math is correct?

11 DR. ECKHARDT: That is the difference between those two  
12 figures, yes.

13 MR. KIRK: Could you turn to Figure 3.1-26? This is  
14 the proposed project average, overall water balance in the  
15 Imperial Valley; is that correct?

16 DR. ECKHARDT: That's correct.

17 MR. KIRK: When I did my math, Dr. Eckhardt, I come up  
18 with 793,000 acre-feet per year of water flowing into the  
19 Sea. Does that look about right?

20 DR. ECKHARDT: Looks about right. These numbers are  
21 unchanged from the Draft.

22 MR. KIRK: The difference between Figure 3.1-16, or the  
23 existing settings, and Figure 3.1-26 is 335,000 acre-feet,  
24 is it not?

25 DR. ECKHARDT: If your math is correct.

1           MR. KIRK: If my math is correct, Dr. Eckhardt, you see  
2 a 356,000 acre-foot reduction -- 356,000 acre-foot reduction  
3 could come from a 300,000 acre-foot reduction because of  
4 on-farm conservation improvements and an additional 56,000  
5 acre-feet from the IOP, correct?

6           DR. ECKHARDT: No, that is not correct. You jumped to  
7 a conclusion just by subtracting the numbers.

8           MR. KIRK: Dr. Eckhardt, the sensitivity analysis, you  
9 also looked at the 1998 MWD-IID agreement, whether that  
10 might be phased out after 40 years; is that correct?

11          DR. ECKHARDT: As I recall, that is correct.

12          MR. KIRK: When that project was evaluated and an EIR  
13 done a number of years ago, did it assume that project  
14 would continue on for an additional time period or did it  
15 end after 40 years?

16          DR. ECKHARDT: As I recall, it assumed it would  
17 continue for a period of time, but there was no  
18 termination.

19          MR. KIRK: Thank you.

20          Ms. Harnish, if we could turn to Master Response page,  
21 I have it as, Page 3-42, the chapter entitled 3.6 Master  
22 Responses on Impact Determination for Fish in the Salton  
23 Sea.

24          Do you have that?

25          MS. HARNISH: Yes, I do.

1 MR. KIRK: Am I on the right page?

2 MS. HARNISH: 3-40?

3 MR. KIRK: I have 3-42.

4 Is it 3-40?

5 MS. HARNISH: In the Final EIR it is 3-40.

6 MR. KIRK: Let the record note that.

7 Thank you.

8 Is this best addressed to you or to somebody else?

9 MS. HARNISH: Probably to Dave Christophel.

10 MR. KIRK: Mr. Christophel, there you've identified six

11 criteria that could be used to determine if a significant

12 impact would occur to the fishery; is that correct?

13 MR. CHRISTOPHEL: That is correct.

14 MR. KIRK: After those six criteria, you identify

15 which significance criteria do not apply; is that correct?

16 MR. OSIAS: Mr. Chairman, I would just like to point

17 out, although Mr. Kirk didn't, that right above the six

18 criteria he asked a question about -- starts a sentence that

19 are listed in the Draft EIS. It is not a change either on

20 this section. He is just going through a comment.

21 We had the same discussion in the EIR draft.

22 MR. KIRK: There is new information provided here

23 below the six criteria. I was laying a foundation for the

24 question about the new material.

25 MR. KIRK: I will be very brief. Criteria -- it reads

1 after these six criteria are listed, the second sentence  
2 there, criteria five and six are not applicable because  
3 there are no local policies or ordinances protecting the  
4 nonnative fish species of the Salton Sea. And there are no  
5 approved or adopted conservation plans that address the  
6 nonnative fish of the Salton Sea; is that correct?

7 MR. CHRISTOPHEL: That is what it says.

8 MR. OSIAS: Is that alleged to be the new material?

9 MR. KIRK: That was my understanding.

10 Did you check with the County of Imperial or the Salton  
11 Sea Authority on any local policies or ordinances protecting  
12 the Sea's fishery?

13 MR. CHRISTOPHEL: I did not address this specifically.

14 Ms. Harnish --

15 MS. HARNISH: It would have been Sandy.

16 MR. CHRISTOPHEL: I did not prepare this.

17 MR. KIRK: If the County of Imperial or the Salton Sea  
18 Authority had a policy or ordinance protecting the fishery  
19 of the Sea, would then the impact be determined  
20 significant?

21 MR. OSIAS: Objection. Do you mean if they had a  
22 policy or ordinance protecting nonnative fish? Or do you  
23 mean a fishery or do you mean the Sea? Ambiguous.

24 CHAIRMAN BAGGETT: Sustain.

25 MR. KIRK: If the Salton Sea Authority or the County of

1 Imperial had a policy or ordinance protecting biological  
2 resources in the Sea, such as its nonnative fish, would then  
3 the Final EIR determine that the proposed project has  
4 significant impacts?

5 MR. CHRISTOPHEL: If that was in conflict with those  
6 policies, yes.

7 MR. KIRK: Thank you.

8 I just have a few more, Mr. Chairman.

9 Ms. Harnish, is there a significant difference in the  
10 way CEQA and NEPA dictate you construct and evaluate your  
11 alternatives?

12 MS. HARNISH: Yes.

13 MR. KIRK: What is that difference?

14 MS. HARNISH: The difference is in the evaluation.

15 MR. KIRK: How so?

16 MS. HARNISH: CEQA requires that you evaluate your  
17 proposed project and look at alternatives, the analysis of  
18 alternatives needn't be on an equal level as the analysis  
19 for on the proposed project. In NEPA the alternatives would  
20 be evaluated in an equal level of detail.

21 MR. KIRK: Do you believe you have satisfied the NEPA  
22 requirements in that case?

23 MR. OSIAS: Objection. Certainly a legal question  
24 about satisfaction of NEPA is not related to a change in EIR.

25 CHAIRMAN BAGGETT: I would sustain that.

1           MR. KIRK: Ms. Harnish, do you believe that the  
2 document puts as much energy and emphasis into evaluating  
3 the socioeconomic impacts of one alternative, fallowing,  
4 when compared to the socioeconomic impacts, for example, the  
5 Salton Sea community, with another alternative, on-farm  
6 conservation?

7           MR. OSIAS: Objection. No change in either information  
8 of the EIR.

9           MR. KIRK: Mr. Chairman, the petitioners have brought  
10 how many witnesses on socioeconomic impacts and brought them  
11 again today. They provided additional information on  
12 socioeconomic impacts, and it tends to focus on one issue,  
13 the fallowing and its impact to the Imperial Valley. It is  
14 a fair question.

15           MR. OSIAS: Fairness not being the standard, that is  
16 also not accurate.

17           CHAIRMAN BAGGETT: True.

18           MR. OSIAS: Certainly the parties who out number the  
19 petitioner by some magnitude of six to seven to one had  
20 equal opportunity to bring as many witness as they wished to  
21 discuss fallowing in Phase II. I don't believe there were  
22 any questions asked of Mr. Highstreet about socioeconomic  
23 impacts other than whether there was a change, nor I believe  
24 was there any testimony today about it.

25           Mr. Kirk's desire to revisit that and compare it to the

1 other areas of the document hasn't changed, including local  
2 communities. I don't think we need to go into this again.

3 CHAIRMAN BAGGETT: Sustain the objection.

4 Can you please restate the question, and keep to the  
5 changes of the Final, from the Draft to the Final?

6 MR. KIRK: Ms. Harnish, when you reconstructed the  
7 various graphs showing salinity surface area, and surface --  
8 surface areas, surface elevation, for example for various  
9 alternatives, did you adjust the scale on the axis of it all  
10 so that the axis would include the same scale?

11 MS. HARNISH: Yes, we did that.

12 MR. KIRK: Thank you very much.

13 MS. HARNISH: You're welcome.

14 CHAIRMAN BAGGETT: San Diego, Ms. Hastings.

15 ----oOo--

16 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

17 BY SAN DIEGO COUNTY WATER AUTHORITY

18 BY MS. HASTINGS

19 MS. HASTINGS: Ms. Harnish, just a couple quick  
20 questions, very basic.

21 Isn't it true that the final environmental document,  
22 which includes the draft environmental document, evaluates  
23 the environmental impacts associated with the conservation  
24 of up to 300,000 acre-feet for the transfer to San Diego  
25 and/or the Coachella Valley Water District and Metropolitan

1 Water District?

2 MS. HARNISH: Yes.

3 MS. HASTINGS: Similar question. Isn't it also true  
4 that the Final Environmental Impact Report evaluated the  
5 environmental impacts associated with the conservation of  
6 water for mitigation will be necessary for that transfer?

7 MS. HARNISH: Yes.

8 MS. HASTINGS: Isn't it also true that both with  
9 respect to the conservation of water for transfer and the  
10 conservation of water for mitigation that the environmental  
11 impacts associated with at least one methodology, the  
12 conservation, following, is evaluated by the final  
13 environmental impact document?

14 MS. HARNISH: Yes.

15 MS. HASTINGS: Thank you.

16 CHAIRMAN BAGGETT: Couple questions, then hearing if  
17 the staff does.

18 ---oOo--

19 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

20 BY THE BOARD

21 CHAIRMAN BAGGETT: Dr. Dickey, on cross you stated that  
22 after a dust emission has occurred, it would be analyzed,  
23 correct? You analyze that. Then after that occurrence and  
24 appropriate mitigation measure or measures listed in the EIR  
25 would then be implemented?

1 DR. DICKEY: Right, or developed in the research  
2 program.

3 CHAIRMAN BAGGETT: I guess, following, what length of  
4 time is necessary to trigger that implementation once you  
5 identified, analyzed, decided mitigation, are we looking at  
6 weeks, months, days, hours?

7 DR. DICKEY: We can use some compare and contrast with  
8 the Owens situation that was let to run for --

9 CHAIRMAN BAGGETT: That was my next question. Maybe  
10 put them all together. I guess, are there mitigation  
11 measures designed in the Final EIR to prevent development of  
12 a major long term dust event such as have occurred in Owens  
13 Valley?

14 DR. DICKEY: That is the purpose of the mitigation  
15 program, and it is structured to avoid that. When we  
16 develop the mitigation program, we recognize that there  
17 wouldn't be an instantaneous response, strictly because of  
18 logistics, just realistic construction timelines and so  
19 forth. And for that reason we maintained the significant  
20 nature of the -- potentially significant nature of that  
21 impact, the air quality impact, that was retained.

22 If it weren't for that overlap, because of the strength  
23 of mitigation or that gap, if you will, implementation gap,  
24 we likely called that impact nonsignificant. So the  
25 timeline to implement, put in ten square miles of shallow

1 flooding at Owens Lake, really came down to the construction  
2 was done in a few months. And there is --

3 If you take the whole design and implementation period,  
4 it was about a year, so that is just one mitigation  
5 project. The second mitigation project was constructed in  
6 120 days; again, design and everything was on the order of a  
7 year. If you have your research done and you know what you  
8 want to do, construction can be done fairly rapidly.

9 CHAIRMAN BAGGETT: So ten square miles, that is 6,400  
10 acres?

11 DR. DICKEY: Thousand.

12 CHAIRMAN BAGGETT: 64,000 -- 6,400 acres.

13 DR. DICKEY: 6,400.

14 CHAIRMAN BAGGETT: I gather it relates to my last  
15 question on the air. You changed the exposed shorelines,  
16 the difference between the Draft and Final is 54,000 to  
17 16,000 acres?

18 DR. DICKEY: True.

19 CHAIRMAN BAGGETT: So we are looking to follow up on  
20 that, then. 6,400 took three months to implement, so here  
21 we're looking at the worst case scenario of 16,000?

22 DR. DICKEY: Well, I don't think so because, again,  
23 even if you assume worse case scenario would be, if you  
24 really stretch it, that the Salton Sea could be as bad as  
25 Owens Lake. At Owens Lake you have 110 square miles of dry

1 lake bed and only about 25 square miles, 25 percent, is  
2 going to be required dust mitigation. That is the current  
3 estimate. If you take 25 percent and apply that to the  
4 16,000 you're at 4,000. So, if it is as bad as Owens Lake,  
5 you have about 4,000 acres you have to fix.

6 Something that could be done quickly, if you know what  
7 you need to do.

8 CHAIRMAN BAGGETT: You're confident the analysis done  
9 so far would allow you to do that fairly quickly?

10 DR. DICKEY: Yeah. One other distinction that is  
11 pretty important with Owens Lake, is that we have around 30  
12 years or 35-plus years, and then we were on it as the sea  
13 declines to do our research. At Owens the research program,  
14 it really only began in earnest ten years ago. We don't  
15 have a lot of design criteria defined even now as we are  
16 building. It is a much more challenging situation.

17 CHAIRMAN BAGGETT: We have more than an hour or so  
18 testimony, as I recall, on Owens and Mono Lake and the  
19 differences.

20 DR. DICKEY: Sorry, I didn't want to dredge.

21 CHAIRMAN BAGGETT: Couple for Ms. Harnish.

22 If, for example, Mexico builds a tertiary treatment  
23 plant to reclaim wastewater, which thus would diminish the  
24 flows into the river, would it not follow then that the  
25 inflow into the Salton Sea would be diminished?

1 MS. HARNISH: John, can I defer that to you, John  
2 Eckhardt? We did address that. I am not familiar with the  
3 specific numbers.

4 DR. ECKHARDT: To answer your question directly, yes,  
5 it would follow.

6 CHAIRMAN BAGGETT: To follow up on that, what  
7 contingencies are built into HCP2 in the Final EIR to deal  
8 with this potential diminution of inflow, for example, like  
9 that, something out of our control?

10 DR. ECKHARDT: That is actually kind of the one for  
11 one. Okay, if I can back up a little bit here. The  
12 mitigation as proposed for the Salton Sea is, first of all,  
13 a one-for-one replace. I shouldn't say the word  
14 "replacement," a mitigation to the Sea for the transfer of  
15 water. Then in addition, there is a projection to keep the  
16 Sea to 60 parts per thousand to the year 2030. In other  
17 words, if flows are changing in the New River, you know, of  
18 course if they are going down, that potentially means  
19 salinity could go up faster.

20 What is being proposed here is every year, in other  
21 words, last year we know what was conserved. So the impact  
22 to the Sea is X. So IID would put in X to the Sea. Then we  
23 look at the salinity of the Sea that year and look at the  
24 year 2030 and project how much more water we need to put in  
25 that year so that -- I'm assuming it would be a straight

1 line -- so that some projection to the year 2030 will keep  
2 us to that.

3 If it is rainfall, if it is changes in flows in any of  
4 the tributaries, the point of that mitigation is to keep the  
5 Sea to 60 parts per thousand or under to the year 2030.

6 MS. HARNISH: I would also add to that, we have a  
7 Master Response on that issue, which is 3.19. And the  
8 environmental documentation for that Mexicali wastewater  
9 system improvement states that all the wastewater collected  
10 for treatment will be discharged back to the New River. So  
11 the reductions in the New River are not expected to be  
12 significant.

13 CHAIRMAN BAGGETT: I was using that, I guess, as an  
14 example.

15 MS. HARNISH: As an example.

16 CHAIRMAN BAGGETT: It could happen from a number of  
17 other sources, not just --

18 MS. HARNISH: Right.

19 DR. ECKHARDT: Right, I understood that.

20 CHAIRMAN BAGGETT: I have no other questions.

21 I did introduce my colleague, Gary Carlton, his first  
22 full day on this. He is a registered civil engineer who has  
23 more than a passing familiarity with many of these issues  
24 you have been talking about.

25 Gary, do you have any questions?



1 MR. OSIAS: Is that limited to the IID farmers?

2 DR. ECKHARDT: It is not.

3 MS. OSIAS: Now there are two places where it is  
4 correctly stated, compared to the sentence you pointed out?

5 DR. ECKHARDT: That's correct.

6 MR. OSIAS: The Chairman asked about, as an example,  
7 the Mexican wastewater treatment plant. You actually used  
8 in your sensitivity analysis Mexican flow impacts that might  
9 come from powerplants; is that right?

10 DR. ECKHARDT: That's correct.

11 MR. OSIAS: Is that found on Page 3-29?

12 DR. ECKHARDT: Yes.

13 MR. OSIAS: Powerplants are more consumptive of water  
14 than a treatment plant?

15 DR. ECKHARDT: Yes, a hundred percent consumptive in  
16 this case.

17 MR. OSIAS: The sensitivity analysis, just to go back  
18 to where we were, was to test something; is that right?

19 DR. ECKHARDT: Yes, to test the assumptions that were  
20 used in creating the baseline.

21 MR. OSIAS: The baseline was developed to test what or  
22 for what purpose? Not to test, I'm sorry.

23 DR. ECKHARDT: I'm sorry, try again.

24 MR. OSIAS: This baseline was for what purpose?

25 DR. ECKHARDT: The baseline was developed so that

1 impacts from the project could be assessed, and those  
2 impacts relating to, of course, in my area hydrology, drains  
3 in the Salton Sea.

4 MR. OSIAS: Was it to compare project impacts to what  
5 would happen to the Sea without the project?

6 DR. ECKHARDT: That's correct.

7 MR. OSIAS: And obviously --

8 MR. YATES: Excuse me, Mr. Chairman, if we are going to  
9 get into a lot of questions on the baseline, I didn't get  
10 into the baseline because it wasn't a change.

11 MR. OSIAS: I didn't the first time either.

12 MR. YATES: On redirect if we are going to do that I  
13 should have the opportunity now to get in some questions.

14 CHAIRMAN BAGGETT: If he opens up baseline, it is going  
15 to be -- 8:00 dinner reservations sounds better all the  
16 time.

17 MR. OSIAS: It might. I have a need to clarify the  
18 incomplete story presented in cross. If you redirect, I  
19 redirect and then he will go round and round. I  
20 understand.

21 Does the Sea respond the same from a baseline  
22 perspective regardless of where the reduction in inflow  
23 comes from? I was using the Mexican example. That is a  
24 reduction caused in Mexico, right?

25 DR. ECKHARDT: Correct.

1 MR. OSIAS: That would have an impact on the Sea?

2 DR. ECKHARDT: That's correct.

3 MR. OSIAS: If the reduction is in Imperial would that  
4 have an impact on the Sea?

5 DR. ECKHARDT: Correct.

6 MR. OSIAS: If it was Coachella, would that have an  
7 impact on the Sea?

8 DR. ECKHARDT: That's correct.

9 MR. OSIAS: Is the volume for this sensitivity analysis  
10 that we were looking at?

11 DR. ECKHARDT: Volume minus losses.

12 MR. OSIAS: Using this powerplant example to just  
13 finish off the question of the Chairman, it shows a minus  
14 four in terms of a difference in the mean. That means if  
15 these powerplants are under construction are built, the Sea  
16 would deteriorate faster?

17 DR. ECKHARDT: Correct.

18 MR. OSIAS: Towards 60 parts per thousand?

19 DR. ECKHARDT: Yes, in this case to the year 2019.

20 MR. OSIAS: Is the powerplant in the baseline?

21 DR. ECKHARDT: They are not.

22 MR. OSIAS: So if the powerplants come on line and use  
23 this water, would the HCP, therefore, have to mitigate this  
24 change by adding additional water to the Sea?

25 DR. ECKHARDT: Yes, they would.

1           MR. OSIAS: So some of these assumptions are sort of  
2 more Sea friendly than others?

3           DR. ECKHARDT: That's correct.

4           MR. OSIAS: Focusing on the one specifically that Mr.  
5 Kirk asked you all the questions about. He first asked a  
6 question about an action and then he later clarified it to  
7 mean one that for which CEQA or NEPA review is needed.

8           Do you remember that line of questioning?

9           DR. ECKHARDT: Yes, I do.

10          MR. OSIAS: What is entitlement enforcement? Just a  
11 definition of it first, setting aside the action. What does  
12 it mean?

13          DR. ECKHARDT: What it means to me, my understanding is  
14 that the Secretary of Interior, based on the contracts and  
15 Supreme Court decree, will enforce those contracts. And in  
16 this case those contracts are the water that is delivered to  
17 each of the contract holders.

18          MR. OSIAS: Do those contracts provide that the ag  
19 entitlement has a cap?

20          DR. ECKHARDT: Yes.

21          MR. OSIAS: What is it?

22          DR. ECKHARDT: 3.85 million acre-feet.

23          MR. OSIAS: If the Secretary does that, is that an  
24 action in the environmental review sense?

25          DR. ECKHARDT: No, that is a discretionary action.

1           MR. OSIAS: That is how it is treated in the  
2 sensitivity analysis?

3           DR. ECKHARDT: That's correct.

4           MR. OSIAS: Do you remember -- let me back up.

5           He asked about 59,000 acre-feet of reduction required  
6 because of entitlement enforcement, correct?

7           DR. ECKHARDT: Correct.

8           MR. OSIAS: We see that in your first line of  
9 sensitivity analysis here?

10          DR. ECKHARDT: That's correct.

11          MR. OSIAS: Is that an average number?

12          DR. ECKHARDT: That is an average number.

13          MR. OSIAS: Within the 3.85 of the ag, does every  
14 district order the same amount every year?

15          DR. ECKHARDT: They do not.

16          MR. OSIAS: What does entitlement enforcement require  
17 the Secretary to do, then, if the aggregate is more than  
18 3.85?

19          DR. ECKHARDT: The Secretary will enforce the 3.85. In  
20 other words, the ag users will be held to the 3.85 based on  
21 the priorities within that 3.85.

22          MR. OSIAS: And setting aside the approval agreement  
23 for one minute, which he wanted to talk about, pieces of, if  
24 Coachella cuts back or IID cuts back by 59,000, does the Sea  
25 have the same affect or is there a difference?

1 DR. ECKHARDT: Essentially there is no difference.

2 MR. OSIAS: Now, that is true whether they cut back by  
3 reducing, leaching or other short-term measures as described  
4 in this box?

5 DR. ECKHARDT: Correct.

6 MR. OSIAS: Or just reduce their orders and don't water  
7 at all?

8 DR. ECKHARDT: That's correct.

9 MR. OSIAS: It is either one to one or three to one  
10 depending on which approach?

11 DR. ECKHARDT: Correct.

12 MR. OSIAS: And it's not location specific?

13 DR. ECKHARDT: It's not location specific.

14 MR. OSIAS: For purposes of the baseline is there any  
15 relevance, again setting aside the Approval Agreement, is  
16 there any relevance to where the cutback comes, between  
17 Coachella and IID?

18 DR. ECKHARDT: There is not.

19 MS. OSIAS: Then we have to address the Approval  
20 Agreement and how that might make a difference?

21 DR. ECKHARDT: Yes, that does make a difference.

22 MR. OSIAS: He asked the question is up to 50-  
23 acre-feet, 50,000 acre-feet, a year available to Coachella  
24 from Metropolitan from the '88 agreement.

25 Do you remember that question?

1 DR. ECKHARDT: Yes, I do.

2 MR. OSIAS: Is 50,000 acre-feet available every year?

3 DR. ECKHARDT: It is only available if required,  
4 depending on what the overage is.

5 MS. OSIAS: What if the overage is 40,000 acre-feet, is  
6 40,000 available for Met?

7 DR. ECKHARDT: As I understand the '88 Approval  
8 Agreement, there is a sharing affect, and there is a  
9 complicated formula which determines what that sharing is,  
10 and that sharing is between CVWD and MWD and, of course,  
11 PVID for a small amount.

12 MR. OSIAS: So it is not the first 50,000 of cutback  
13 that MWD has to give back to Coachella?

14 DR. ECKHARDT: That's correct.

15 MR. OSIAS: So, if the cutback was 59,000 acre-feet,  
16 would Coachella have 50,000 available from Metropolitan?

17 DR. ECKHARDT: As I recall, I don't remember all the  
18 details of the equation, it would be something less than  
19 50,000.

20 MR. OSIAS: Closer to half?

21 DR. ECKHARDT: It would be closer to half.

22 MR. OSIAS: Now, is that automatic or do the other  
23 districts have to make choices?

24 DR. ECKHARDT: It is not automatic. The other  
25 districts have to make a choice.

1           MR. OSIAS: Could IID choose under the Approval  
2 Agreement to take the hit for the component that Met would  
3 otherwise have to give back to Coachella?

4           DR. ECKHARDT: Yes. As I testified before, yes.

5           MR. OSIAS: And I think Mr. Kirk asked sort of  
6 incredulously why would they do that. I am not sure he got  
7 an answer.

8           So let me ask again: Why would they do that?

9           DR. ECKHARDT: The way the agreement is structured is  
10 that when MWD does take that hit from their amount, the  
11 agreement can be extended. If IID steps in and decides to  
12 substitute their water for that, then the agreement no  
13 longer would be extended. So that would be one reason why  
14 IID would want to do that, so the agreement is not extended.

15          MR. OSIAS: Is it automatic or do they have to choose?

16          DR. ECKHARDT: They have to choose.

17          MR. OSIAS: Who gets to choose, Met or IID?

18          DR. ECKHARDT: IID.

19          MR. OSIAS: Do you have a copy of that agreement with  
20 you?

21          DR. ECKHARDT: I do in my briefcase.

22          MR. OSIAS: Could you take a look? I think you have  
23 that backwards.

24                 The question is about extension. If IID doesn't step  
25 up and take the cutback. Instead Met does and shares, say,

1 the 59-, what happens to the term of the agreement?

2 DR. ECKHARDT: The term -- if MWD steps up, the term is  
3 extended, based on the cumulative amount that they actually  
4 curtail over the period of time.

5 MR. OSIAS: They being Met?

6 DR. ECKHARDT: They being Met, yes.

7 MR. OSIAS: Now going back to the volatility, we had  
8 exhibits before, think Exhibit 11, for example, showed the  
9 volatility in IID. Do you remember that?

10 DR. ECKHARDT: Yes, I do.

11 MR. OSIAS: If some years a district is over and some  
12 years it is under, paybacks are required when it is over.  
13 Do you have a credit when you are under the 3.85 cap?

14 DR. ECKHARDT: You do not.

15 MR. OSIAS: Is that because there is no inadvertent  
16 overrun program? Or why is that?

17 DR. ECKHARDT: Entitle enforcement or what the  
18 Secretary does in the type of enforcement is only for those  
19 amounts that are over the 3.85.

20 MR. OSIAS: So it is just a ceiling and any time you  
21 are under --

22 DR. ECKHARDT: You get no credit for being under.

23 MR. OSIAS: Could you give us an example of how this  
24 50,000 or up to 50,000 payback could work?

25 DR. ECKHARDT: Yes, I could. I have two ways to do

1 this. I could do this manually or I could plug into your  
2 computer.

3 MR. OSIAS: We don't have a white board. Try it  
4 orally. We will all follow along with a pencil.

5 DR. ECKHARDT: What I would like to do -- I have to get  
6 my computer set up. It went blank on me.

7 What I would like to do is give everybody an example of  
8 maybe a ten-year period, and this is going to be hard to  
9 follow unless you write this down or I'm on a white board.  
10 Too much professor here.

11 If you will use a first column here and label that  
12 "Years," and we will have one through ten in years. The  
13 second column I'm going to define as the difference from  
14 3.85. So what I'm going to do now is give a hypothetical,  
15 the 3.85 over and underage. So for year one I'm going to  
16 say -- these are in thousand acre-feet. So for year one I'm  
17 going to say it was under 100-, so that is a minus 100-.  
18 Year two it was zero. Year three was plus 170-. Year four  
19 was zero. Year five we are under minus 50-. Year six plus  
20 70-. Year seven plus 200-. Year eight zero. Year nine  
21 zero, and year ten plus 160-.

22 If you average to a straight arithmetic average of  
23 those numbers, you get an average of 45-.

24 MR. OSIAS: So somebody looking at the ag years over  
25 that ten-year period would say it was averaging 45,000

1 acre-feet over 3.85?

2 DR. ECKHARDT: That's correct. You can make that  
3 assumption.

4 Now the way the entitle curtailment, to use the term  
5 that is used in the document, is, in fact, and the way we  
6 did our analysis, is we only looked at the overages.

7 So if you make another column and show overages here,  
8 you will see in year three you have an overage of 170-.  
9 Year six you have an overage of 70-. Year seven, an overage  
10 of 200- and year ten an overage of 160-. Now, this is  
11 exactly we've got 59,000 is those numbers were summed and  
12 averaged over that period of time. So you will see this  
13 average is 60-.

14 MR. OSIAS: So the average of the overage is 60-?

15 DR. ECKHARDT: Right.

16 MR. OSIAS: Even though the arithmetic average of the  
17 total ag use is only 45-?

18 CHAIRMAN BAGGETT: Over ten years?

19 DR. ECKHARDT: Over this ten-year period; that's  
20 correct.

21 CHAIRMAN BAGGETT: Not over four years?

22 MR. OSIAS: If you did over four years, when it is over  
23 it is over by 150-.

24 CHAIRMAN BAGGETT: That is what I meant.

25 DR. ECKHARDT: Now to get to the point here, the

1 Approval Agreement. We have another column here which I am  
2 going to label MWD at this point because PVID is such a  
3 small portion; it would be hard to add into this.

4 There is actually going to be two columns here. There  
5 is going to be "MWD" and then there is going to be "Adjusted  
6 Overage." This is the purpose of the Approval Agreement.  
7 If we go to year three, we see the overage of 170-, if you  
8 go through the mathematical formula that is in the  
9 agreement, it maxes out at 50-. So in this case in that MWD  
10 column they potentially could provide 50- or reduce their  
11 conserved water by 50-, which reduces that overage from 170-  
12 to 120-. The last column would have a 120- in it.

13 If we go to your year six, you see the overage is 70-.  
14 Using just a very simple, simplistic version of that  
15 formula, I'm assuming that about 60 percent is what MWD  
16 would have to pay. I don't know what the exact number is,  
17 probably between 50- and 60- for this small amount. So MWD  
18 would curtail 42 which would reduce that 70- overage to 28-  
19 in the last column.

20 The next year, year seven, we have an overage of 200-,  
21 and, of course, according to the agreement, we max at 50-.  
22 So that would reduce the overage to 150- in the last  
23 column.

24 Then in year ten again that 160- we are going to hit  
25 the 50- limit, so reduce the 160- to 110-.

1           In that last column you have an adjusted overage  
2 because of the '88 Approval Agreement of 120- in year three,  
3 28- in year six, 150- in year seven, and year ten 110-, for  
4 an average of 40.8-.

5           MR. OSIAS: Let's call that 41-.

6           DR. ECKHARDT: Call that 41-.

7           MR. OSIAS: Instead of saying, gee, you have 50-  
8 available, and your overage is 60-, so the Sea impact is  
9 10-, in fact, what we see is that the difference is 19- in  
10 this example between the overage if the Approval Agreement  
11 is triggered in each of the four years it could have been  
12 versus without?

13          DR. ECKHARDT: That is correct.

14          MR. OSIAS: If one year IID decided not to have an  
15 extension and took the water, let's say they took the  
16 smaller year at 28-, what would happen to the average?

17          DR. ECKHARDT: The average would actually go up. I  
18 picked a year, but if you take 28- -- pick that year that  
19 28- moved to 70-, so you add 42- and divide that out and you  
20 come up with something a little greater than 41-.

21          MR. OSIAS: Now looking at your sensitivity analysis,  
22 does the Approval Agreement in any way cause you to believe  
23 that the ban for the baseline, the 90 percent confidence  
24 interval that is the baseline, that that is in error in any  
25 way?

1 DR. ECKHARDT: It does not.

2 MR. OSIAS: In this little hypo the average cutback  
3 after Approval Agreement to Coachella would be 41,000  
4 acre-feet; is that right?

5 DR. ECKHARDT: That's correct.

6 MR. OSIAS: That could either be one to one or a third?

7 DR. ECKHARDT: Or a third to one. That is the impact  
8 to the Sea.

9 MR. OSIAS: Thank you.

10 CHAIRMAN BAGGETT: Mr. Gilbert, do you have any  
11 questions?

12 MR. GILBERT: No.

13 CHAIRMAN BAGGETT: Mr. Du Bois?

14 MR. DU BOIS: No.

15 CHAIRMAN BAGGETT: Mr. Rodegerdts.

16 MR. RODEGERDTS: No.

17 CHAIRMAN BAGGETT: Mr. Rossmann?

18 MR. ROSSMANN: No, sir.

19 CHAIRMAN BAGGETT: Mr. Fletcher?

20 MR. FLETCHER: No.

21 CHAIRMAN BAGGETT: Mr. Yates.

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1           RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

2                   BY NATIONAL AUDUBON SOCIETY - CALIFORNIA

3                           BY MR. YATES

4           MR. YATES: Thank you, Mr. Chairman.

5           I would just like to address some questions on this  
6 baseline issue.

7           Mr. Eckhardt, did you prepare the Master Response on  
8 development of the baseline?

9           DR. ECKHARDT: I'm the senior reviewer, so I reviewed  
10 the response and I also set up the criteria for the Bureau  
11 of Reclamation to run for the sensitivity analysis.

12          MR. YATES: That is a yes?

13          DR. ECKHARDT: Yes.

14          MR. YATES: Thank you.

15          Turning your attention to Page 3-19 under the heading  
16 3.3.3 CEQA Requirements, in which we deal with this issue of  
17 the baseline, criticism you received from National Audubon.

18          Ms. Harnish, I believe, didn't you say in the  
19 cross-examination I believe that the no project alternative  
20 and the baseline are the same for the purposes here?

21          MR. OSIAS: Objection. Because the question says "for  
22 the purpose here," and he is referring to baseline. I don't  
23 think that was the context of the question when asked to Ms.  
24 Harnish here.

25          CHAIRMAN BAGGETT: Can you clarify?

1           MR. YATES: Is the baseline used the same as the  
2 analysis in the no-project alternative?  
3           MS. HARNISH: For the hydrology, yes.  
4           MR. YATES: Dr. Eckhardt, are you familiar with CEQA  
5 guidelines 15126.6, Subdivision E?  
6           DR. ECKHARDT: I am not.  
7           MR. YATES: Can I read that to you? It says:  
8                    The no-project alternative analysis is not  
9                    the baseline for determining whether the  
10                   proposed projects environmental impacts may  
11                   be significant, unless it is identical to the  
12                   existing environmental setting analysis which  
13                   does establish that baseline. (Reading.)  
14           Then it says in parentheses, see Section 12125.  
15           MR. OSIAS: Question.  
16           MR. YATES: Ms. Harnish, are you familiar with that?  
17           MS. HARNISH: I'm sorry, I was reading something.  
18           Did you just read the guideline?  
19           MR. YATES: Yes.  
20           MS. HARNISH: I am familiar with that, yes.  
21           MR. YATES: Are you also familiar with Section 15125,  
22 the environmental setting?  
23           MS. HARNISH: Yes.  
24           MR. YATES: And if I can read from Subdivision A, it  
25 says:

1           An EIR must include a description of the  
2           physical environmental conditions in the  
3           vicinity of the project as they exist at the  
4           time of the notice of preparation is  
5           published, or if no notice of preparation is  
6           published at the time the environmental  
7           analysis is commenced from both a local and  
8           regional perspective.

9           (Reading.)

10          Is that a correct reading?

11          MS. HARNISH: Well, I don't have the guidelines in  
12          front of me. That sounds right.

13          MR. YATES: Do you want me to hand this to you?

14          MS. HARNISH: That's okay. I will take your word for  
15          it.

16          MR. YATES: Are you familiar with the cases you have  
17          cited here in your Response to Comments, Dr. Eckhardt?

18          MR. OSIAS: Mr. Chairman, I suppose there's not much  
19          damage to reading the guideline into the record and asking  
20          whether the witness knows about it.

21          As to the cases, I object. Beyond the scope of  
22          redirect, and also probably beyond the expertise of the  
23          hydrologist. And the case law also calls for legal  
24          analysis.

25          CHAIRMAN BAGGETT: Mr. Yates, do you have any --

1           MR. YATES: I guess I am trying to get to the  
2           foundational issue here which on the recross we got into the  
3           issue of the baseline, the purpose for the baseline and what  
4           it actually shows as far as the impacts of the project. And  
5           so I am trying to establish where this baseline came from  
6           and then to address later the issue dealing with air quality  
7           impacts where we didn't use this kind of statistical  
8           analysis to determine the baseline for air quality.

9           MR. OSIAS: Mr. Chairman, where the baseline  
10          calculation came from the witness testified earlier run by  
11          the Bureau, but he gave the assumption. The redirect, of  
12          course, was on the sensitivity analysis portion of it and  
13          its purpose. I don't see how that has anything to do with  
14          the case law.

15          CHAIRMAN BAGGETT: I would sustain the objection on  
16          case law. Just go to the question you are trying to --

17          MR. YATES: Okay.

18          Dr. Dickey, on Page 3-53, the next to the last  
19          paragraph, I don't know whether you authored this or you  
20          were part of the team that authored this. But you point out  
21          that the conditions for the Salton Sea elevation to the year  
22          2035 are, I think your term is, uncertain.

23          Is that correct?

24          MR. OSIAS: Objection. Calls for an answer to the  
25          question beyond the scope of redirect.

1           CHAIRMAN BAGGETT: Sustain that. We weren't dealing  
2 with air quality at all on redirect.

3           MR. YATES: Dealing with baseline.

4           CHAIRMAN BAGGETT: You are dealing with the air. He  
5 didn't get on redirect to the air issues and baseline.  
6 Trying to --

7           MR. YATES: I mean, I will agree with that. We weren't  
8 dealing with air. We are dealing with a concept here of  
9 this baseline as to how its determination either in the  
10 sensitivity analysis, or whatever, as to how we come up  
11 with this formula that Dr. Eckhardt was asked to go through  
12 to determine how we establish the baseline especially in  
13 light of changes.

14           CHAIRMAN BAGGETT: That is legitimate. Ask a question  
15 on the formula, where it came from. That is legitimate.  
16 Just ask the panel, see if they can --

17           MR. YATES: To compare, I am trying to compare that to  
18 what didn't occur on air quality.

19           MR. OSIAS: That would be argument.

20           CHAIRMAN BAGGETT: I would agree. Sustain. You will  
21 get your opportunity to do that in a closing brief. You can  
22 argue that later. At this point, recross, we are giving you  
23 some latitude on the baseline. I am sure Mr. Kirk will have  
24 a couple questions, too, and how we got there. I think it  
25 is fair to ask your questions about what methods were used,

1 what analysis, or how, if you have any questions along those  
2 lines.

3 MR. YATES: We will save it for our final brief.

4 CHAIRMAN BAGGETT: Thank you.

5 Mr. Kirk.

6 ---oOo---

7 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

8 BY THE SALTON SEA AUTHORITY

9 BY MR. KIRK

10 MR. KIRK: Dr. Eckhardt, can you turn to Table 3.3-1  
11 again?

12 MR. HARNISH: Page 3-28.

13 MR. KIRK: 3-28, did you say.

14 DR. ECKHARDT: Okay.

15 MR. KIRK: The hypothetical you used on entitlement  
16 enforcement, if I followed you correctly, you ended up with  
17 your adjusted overage averaging 40.8 thousand acre-feet per  
18 year. Is that correct?

19 DR. ECKHARDT: That's correct.

20 MR. KIRK: If, in fact, you had accounted for the MWD  
21 makeup water in the way you are suggesting, the reduction to  
22 CVWD and IID could have been reduced by 16- or 17,000  
23 acre-feet per year if your hypothetical is within the realm  
24 of reason; is that correct?

25 DR. ECKHARDT: That is correct.

1 MR. YATES: And if the adjusted average --

2 DR. ECKHARDT: Excuse me. That was based on the  
3 one-third to one.

4 MR. KIRK: I don't think so. The 40.8 was a one to  
5 one; am I correct?

6 DR. ECKHARDT: Right.

7 MR. KIRK: Where I am headed is a one to three. If the  
8 40.8 were the net reduction in diversion to CVWD and IID  
9 under entitlement enforcements, and there is a three-to-one  
10 relationship in terms of diversion to inflow impact, then  
11 the reduction in inflow to the Sea would be more like 13,000  
12 acre-feet per year, correct?

13 DR. ECKHARDT: It would be a third of 41-.

14 MR. KIRK: An accounting for a couple thousand  
15 acre-feet of system loss?

16 DR. ECKHARDT: Right.

17 MR. KIRK: Under a 13,000 acre-foot reduction at the  
18 Salton Sea, the revised assumption if we look across the  
19 first row under entitlement enforcement, instead of 19,000  
20 acre-foot under sensitivity analysis, we would have done a  
21 sensitivity analysis on about 13,000 acre-feet per year  
22 reduction at the Salton Sea, correct?

23 DR. ECKHARDT: That's correct, using the assumptions I  
24 did in my example.

25 MR. KIRK: And that revised assumption would actually

1 increase the last column, the number of additional years the  
2 Salton Sea would reach 60 parts per thousand salinity,  
3 correct?

4 DR. ECKHARDT: For this assumption, that is correct.

5 MR. KIRK: Could reduce it by another five or six years  
6 or perhaps more, correct?

7 DR. ECKHARDT: Based on what?

8 MR. KIRK: Based on a guesstimate. If you went from a  
9 19,000 acre-foot reduction to the Salton Sea to 13,000  
10 acre-foot reduction to the Sea, it could extend the life of  
11 the Sea for purposes of --

12 DR. ECKHARDT: I don't know how much.

13 MR. KIRK: You already testified that the ten-year  
14 difference was the largest difference of all the sensitivity  
15 analysis that you ran and displayed in Table 3.3-1, correct?

16 DR. ECKHARDT: Of all the assumptions used to create  
17 the baseline, that is correct.

18 MR. KIRK: No further questions.

19 Thank you.

20 CHAIRMAN BAGGETT: San Diego.

21 MS. HASTINGS: No questions.

22 CHAIRMAN BAGGETT: I have no questions.

23 Staff?

24 ----oOo----

25 //

1 FURTHER REDIRECT EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

2 BY MR. OSIAS

3 MR. OSIAS: I will ask one. Dr. Eckhardt, if when you  
4 did your sensitivity analysis, when you went from roughly  
5 57, 56.9, to 19 --

6 DR. ECKHARDT: Yes.

7 MR. OSIAS: It had a change of ten years on the median?

8 DR. ECKHARDT: On the median only.

9 MR. OSIAS: That was for 38,000 acre-foot difference?

10 DR. ECKHARDT: Correct.

11 MR. OSIAS: You wouldn't expect a 4- or 5,000 acre-foot  
12 difference -- you wouldn't expect a four- or five-year  
13 difference from a --

14 DR. ECKHARDT: No.

15 MR. OSIAS: -- 4- or 5,000 difference?

16 DR. ECKHARDT: I don't know what it would be, but I  
17 would not expect a four- or five-year difference. So I  
18 missed the point of Mr. Kirk's question.

19 MR. OSIAS: Thank you.

20 CHAIRMAN BAGGETT: Is there any other recross on that?

21 With that, exhibits.

22 MR. OSIAS: I would like to offer in the official  
23 version of the EIR/EIS and the final version of the PEIR  
24 for the QSA which is incorporated by reference and the  
25 Implementation Agreement, Inadvertent Overrun EIS, which is

1 the Final Administrative Draft which has been incorporated  
2 by reference.

3 MR. ROSSMANN: Only request that you identify those for  
4 the record, each volume, since there hasn't been service and  
5 I don't think we know what those are.

6 CHAIRMAN BAGGETT: There has been service, but it  
7 hasn't necessarily arrived is what I am learning; it might  
8 have been sent.

9 MR. OSIAS: For the Final EIR for the IID project there  
10 is a two-volume document called Final Environmental Impact  
11 Report/Environmental Impact Statement, dated June 2002. It  
12 is a two-volume edition.

13 For the PEIR it is called Final Program Environmental  
14 Impact Report, Implementation of the Colorado River  
15 Quantification Settlement Agreement, Volume I, EIR Text and  
16 Appendices. Volume II, Comments and Responses dated June  
17 2002.

18 And for the Administrative Final Environmental Impact  
19 Statement relating to the Implementation Agreement,  
20 Inadvertent Overrun and Payback Policy and Related Federal  
21 Actions, dated June 2002, there is a single volume entitled,  
22 Volume I and Appendix I.

23 I would offer those in.

24 CHAIRMAN BAGGETT: Any objections?

25 MR. ROSSMANN: Just a clarification, your Honor. It

1 took me a while to figure on it. Although the Final is in  
2 two volumes, it's actually in three binders.

3 Am I correct about that? Because I have my Volume I  
4 that actually takes up two binders. So I think everyone --  
5 I just want to be very sure that to get this final --

6 MR. OSIAS: I have a larger binder than you have  
7 physically, but they are consecutively numbered pages. Let  
8 me put them into one or three binders; it is from page --  
9 the first volume runs from the contents page, iii, to 6-6,  
10 which is the last page of the references.

11 MR. ROSSMANN: Right. That is affirmative.

12 MR. OSIAS: Thank you.

13 CHAIRMAN BAGGETT: Okay. They are admitted.

14 MR. OSIAS: Thank you.

15 I had a question, if I might, on the brief that we  
16 received which seems to be --

17 CHAIRMAN BAGGETT: I was going to comment on a few  
18 things. Wait until I make my comments, see if there is any  
19 clarification.

20 Exhibits are taken care of.

21 We will not have -- the next two days are now time to  
22 do other things. I am sure we can all find something to do  
23 tomorrow.

24 I guess, let me go to rebuttal first. Will there be  
25 any next week?

1           MR. FLETCHER: I have arranged with Mr. Shade to come  
2 up on the 15th or 16th. I would like to discuss -- I would  
3 like to talk with him before I change -- make arrangements.  
4 I would be happy to inform people on Wednesday.

5           CHAIRMAN BAGGETT: I would propose no Monday. We will  
6 only come back Tuesday then. So that is 16th.

7           MR. FLETCHER: Are there other people that may have  
8 rebuttal?

9           CHAIRMAN BAGGETT: That is what I am asking. If there  
10 is only one, then I think we can do closing and rebuttal and  
11 everything on Tuesday. Not come back on Monday.

12          MS. DIFFERDING: There is a possibility that one of the  
13 other parties that are not here today, like PCL, might have  
14 rebuttal, and the last letter we sent out to all the parties  
15 asked for, correct me if I am wrong, but I think it was  
16 outlines of rebuttal testimony by Friday.

17          MR. OSIAS: How would they know the scope of rebuttal  
18 without having attended?

19          CHAIRMAN BAGGETT: It would be a real challenge, I  
20 think.

21          MR. OSIAS: I think it would be rebuttal to today.

22          CHAIRMAN BAGGETT: Rebuttal to changes. They could  
23 know the changes without being here.

24          MR. RODEGERDTS: What was today?

25          CHAIRMAN BAGGETT: This was a chance for other parties

1 to bring their witnesses. So, so far we have maybe one from  
2 PCL [verbatim] and IID.

3 MS. HASTINGS: At this time I can't say for sure. I  
4 think it is highly unlikely.

5 MR. KIRK: I think it is unlikely, but I would like to  
6 reserve the opportunity to think about it. Maybe we  
7 establish, if we can get ahold of the other parties, a  
8 deadline of Wednesday so we don't wait to the last minute  
9 on Friday.

10 CHAIRMAN BAGGETT: We send out an E-mail to parties  
11 tomorrow and define by close of day on Wednesday.

12 We will have an E-mail out today. I will send out an  
13 order shortening the time to respond to rebuttal to  
14 Wednesday. That gives you two days.

15 MR. FLETCHER: That is fine. If there is a way to  
16 contact Mr. Du Bois and Mr. Gilbert by some method other  
17 than E-mail.

18 MR. DU BOIS: I do have a telephone.

19 CHAIRMAN BAGGETT: We can exchange phone numbers  
20 afterwards.

21 MS. HASTINGS: Mr. Chairman, I just want to clarify.  
22 On Wednesday you would expect us to identify the fact that  
23 we will provide rebuttal.

24 CHAIRMAN BAGGETT: If you plan to and give us the  
25 witness and the outline like you did?

1 MS. HASTINGS: Move the Friday date up to Wednesday.

2 CHAIRMAN BAGGETT: My preference would be not to meet  
3 on Monday unless there seems to be a massive number. It  
4 sounds like we aren't going to have a massive number of  
5 rebuttal witnesses. And then we will have a ten-minute  
6 chance for each party to do ten minutes of oral closing.

7 MS. DIFFERDING: Do you just want to know whether there  
8 would be rebuttal witnesses by Wednesday or that and also  
9 the outlines of any testimony?

10 CHAIRMAN BAGGETT: Both witnesses and outlines by the  
11 end of the day Wednesday. We will make that by five since  
12 it is the middle of the week, by 5:00 on Wednesday. We can  
13 send out an E-mail. Everybody here is already noticed of  
14 that.

15 MR. OSIAS: Is there any possibility that the time  
16 allocations could be other than by just head count? I don't  
17 think the burden is the same for a petitioner who has to  
18 establish all the components in an affirmative case than an  
19 opponent who merely has to shoot one.

20 CHAIRMAN BAGGETT: There are 13 parties. Your  
21 argument may be that since the petitioner should maybe get  
22 more than ten minutes?

23 MR. OSIAS: Maybe ten at the front and ten at the end.  
24 It is not unusual to have the plaintiff have the last word.

25 CHAIRMAN BAGGETT: I was going to do reverse order

1       again for closing, where we will start out with Mr. Gilbert,  
2       just like we did today.  IID as petitioner would get to go  
3       last.

4               MR. OSIAS:  That helps.

5               CHAIRMAN BAGGETT:  Unless an objection, I have no  
6       problem doubling the time of the petitioner, giving 20  
7       minutes.

8               MR. ROSSMANN:  We have two petitioners.

9               MS. HASTINGS:  I understand.  I just want to clarify,  
10       we are also petitioner?

11              CHAIRMAN BAGGETT:  Right.

12              MS. HASTINGS:  You will provide us with 20 minutes at  
13       best.

14              CHAIRMAN BAGGETT:  Unless no objection.

15              MR. KIRK:  What I would suggest is to go with Mr.  
16       Osias' original suggestion.  They start with ten minutes and  
17       are able to wrap up at the end with another ten minutes.

18              CHAIRMAN BAGGETT:  Normally you get the last.  I'll  
19       leave it at last, otherwise I can see what is going on  
20       forever.  We'll -- I will give the petitioners 40 minutes to  
21       use as they see fit between the two petitioners.

22              MS. OSIAS:  Thank you.

23              CHAIRMAN BAGGETT:  The other parties if you want to do  
24       a joint, I think we've been fairly flexible throughout this  
25       hearing.  If three or four groups want to do a joint closing

1 together, that is fine and reapportion five of 15. We have  
2 done that with the way we've done our panels. I would be  
3 agreeable.

4 Ten minutes for all other parties. If they want to do  
5 it as a panel in closing, that is fine with me. The same  
6 with the two petitioners, if you want to combine your 40  
7 minutes any way you see, if you want to combine them.

8 MR. OSIAS: Thank you.

9 CHAIRMAN BAGGETT: There will be no extensions as noted  
10 in the July 3rd letter, in terms of times for briefs and so  
11 on.

12 I think, regarding the list of questions I sent out on  
13 the 14th of June, I just want to reiterate, there is no  
14 requirement that any or all of these questions be responded  
15 to in the closing briefs. It is, as always, up to the  
16 discretion of the party and their counsel to use that brief  
17 for any legal argument that they feel is persuasive and  
18 argues their position. That's been the policy of this  
19 Board in the past. It is the policy of any Board I know.  
20 You can't require, make requirements, in closing briefs.  
21 These are just things that we had some interest in and there  
22 are obviously a lot of other issues.

23 You have an extra day. I am not trying to encourage  
24 length of brief. I think we have all been here over the  
25 last almost two months now. I think people understand what

1 the main issues are and what the arguments are. I guess  
2 that is what we are looking for, succinct arguments, go to  
3 the point. No evidence. I think the attorneys are well  
4 aware of that. You can't use a brief to introduce new  
5 evidence, only to argue the case based on evidence in the  
6 record. And we are particularly interested in some of the  
7 legal issues which have been raised.

8 MR. ROSSMANN: On the briefs, sir, it is indeed a  
9 necessary blessing that we have tomorrow. I still am not  
10 sure how we are going to get there, but things have a way of  
11 working out. But I know your Honor has set Thursday at noon  
12 as the deadline for those briefs. May I just gently suggest  
13 that both the California Supreme Court and the Ninth Circuit  
14 deem the hard copies of briefs served when they are posted  
15 for overnight delivery, and if we could get you the  
16 electronic version by noon on Thursday, but post you the  
17 hard copy on Thursday overnight, that would really be a  
18 great help.

19 CHAIRMAN BAGGETT: That is fine. The original reason  
20 was we want to have some time before Monday to actually read  
21 them before the closing arguments. If, in fact, we don't  
22 use Monday, that gives all of us in this room an opportunity  
23 to read each others' comments before Tuesday, which I think  
24 will make for better closing arguments and better questions  
25 by myself and my colleagues, which we can ask on Tuesday.

1           So what did we set, noon on Thursday?

2           MR. OSIAS: I think the suggestion is electronically --

3           CHAIRMAN BAGGETT: We don't need the hard copy in hand  
4 by then.

5           MR. ROSSMANN: Thank you, sir. It will be FedExed to  
6 the few parties who do not have electronic service.

7           CHAIRMAN BAGGETT: I wish we could determine whether we  
8 are going to need Monday or not, then I would have no  
9 problem giving another day if, shall we say, more succinct  
10 briefs, instead of just making it longer because you have an  
11 extra day. I realize that. Just to encourage what you  
12 might spend a little more time writing.

13          MR. ROSSMANN: Let me make a suggestion on that,  
14 something that you might fix now. If you had it at the end  
15 of the day Thursday, we'd still have to get them out FedExed  
16 that day. I want to be sensitive to the parties who do not  
17 have electronics, you want everyone to get them Friday.  
18 Otherwise you are going to run into Saturday service and the  
19 weekend, and that probably isn't fair.

20          CHAIRMAN BAGGETT: Stick with electronic service by  
21 noon on Thursday.

22          MR. ROSSMANN: Since your Honor was even suggesting an  
23 extra day, maybe have just the electronic service at 5:00  
24 rather than noon, and then that would also be the time we  
25 have to have things out FedEx.

1           MR. OSIAS: Only if there are no witnesses identified  
2 by Wednesday. Otherwise we have to prepare for that as  
3 well. I'd much rather have an extra day to read.

4           CHAIRMAN BAGGETT: We have one potential so far.

5           MR. OSIAS: I mean if we have to use both days. You  
6 will let us know by Thursday, I suppose, whether you judge  
7 the number to be a one day or a two day.

8           CHAIRMAN BAGGETT: Judging from what I heard today,  
9 sounds like there is two parties that are considering  
10 it, and it's one witness each. I can't imagine going more  
11 than a morning, judging from what we did today. We can go  
12 late and do it all in one day, and afternoon for closing,  
13 take half a day on that.

14           With that, we will say 5:00 electronic service by  
15 Thursday, by five, by close of business which in essence  
16 gives you another day, as long as they are sent out sometime  
17 that night.

18           Anything else?

19           MR. OSIAS: We had supplement briefs regarding  
20 environmental, which is where I thought we should deal with  
21 the extra brief filed by Imperial County. We would intend  
22 to brief that in our environmental one.

23           CHAIRMAN BAGGETT: Well, preliminary brief?

24           MR. OSIAS: The one that says for environmental reasons  
25 it is time to punt or something.



1           CHAIRMAN BAGGETT: Back on the record.

2           At this point the briefs will now be due electronically  
3 by five p.m. on the 11th. We encourage them to fully  
4 examine the issues by the parties, so feel there is no page  
5 limit. On the 16th at 9:00 a.m. we will resume with any  
6 rebuttal testimony. Outlines and list of rebuttal witnesses  
7 are due by 5:00 on Wednesday the 10th, and we will begin at  
8 9:00 on the 16th after which we will do closing arguments,  
9 ten minutes per party with the exception of the petitioners  
10 which each petitioner has 20 minutes, and parties are  
11 welcome to do their closings as a panel or however they feel  
12 most efficient way to use their time. We will then  
13 determine a date on the 16th when supplemental briefs are  
14 due. They will be very limited in nature and limited to ten  
15 pages.

16           Any other question?

17           If not, we'll see you 9:00 in this same room, Sierra  
18 Hearing Room, next week.

19           Thank you very much.

20                           (□Hearing adjourned at 4:50 p.m.)

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