



**United States Department of the Interior**

**FISH AND WILDLIFE SERVICE**

California/Nevada Operations Office  
2800 Cottage Way, Suite W-2606  
Sacramento, California 95825-1846



IN REPLY REFER TO:

**Memorandum**

**To:** Regional Director, Bureau of Reclamation  
Lower Colorado River Regional Office, Boulder City, Nevada

**From:** Manager, California-Nevada Operations Office  
Sacramento, California

**Subject:** Imperial Irrigation District (IID) Water Conservation and Transfer Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) Comments

The Fish and Wildlife Service (Service) has received the IID Water Conservation and Transfer Project Draft EIR/EIS and Draft Habitat Conservation Plan (HCP) for review. The Service was designated a cooperating agency by the Bureau of Reclamation (Bureau) on the EIS so that a single document could address both project and permit issuance National Environmental Policy Act (NEPA) requirements. The Service's Record of Decision (ROD) will be based on the Final EIS and other documents required by the permitting process in section 10(a)(1)(B) of the Endangered Species Act (ESA; as amended). In order to assure that the Final EIS will meet both of our agencies' needs, we offer the following comments on the project and document. We have also provided additional information on the status of the HCP (Enclosure 1). Our comments on the Draft EIR/EIS are of a general nature; specific comments (including those of an editorial nature) have been provided directly to CH2MHill in the form of copies of "margin notes" from our staff's review of the document. It is important to note that the HCP is evolving as we continue to work with IID. As the proposed project and compensating mitigation measures change additional analysis will be necessary for the Final EIR/EIS. These issues need to be considered and addressed in the Final EIR/EIS or the Service will have to prepare additional NEPA documents for the HCP and proposed permit issuance.

F5-1

F5-2

**Draft EIR/EIS Comments**

*Water Conservation and Transfer Project*

The Service recognizes the importance of the proposed transfers of water between water agencies in support of the California Colorado River Water Use Plan (4.4 Plan) and we appreciate the coordination that has been provided to the Service in our effort to meet the project time lines. In light of the high resource values of the Salton Sea, we support an approach to water conservation and

F5-3

**Letter - F5. U.S. Department of the Interior Fish and Wildlife Service. Signatory - Steve Thompson.**

**Response to Comment F5-1**

Comment noted.

**Response to Comment F5-2**

The suggested changes have been made and are reflected in the HCP in Attachment A in this Final EIR/EIS.

**Response to Comment F5-3**

Please refer to the Master Responses on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project, and Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS.

transfer that does not preclude (either technically or economically) the restoration of the Salton Sea. Alternative 4 in the Draft EIR/EIS combined with Approach 2 for the Salton Sea in the HCP (mitigation water) appears to offer the best opportunity for implementing the project, while avoiding significant impacts to the fish and wildlife resources and the Salton Sea, and not precluding the development and implementation of a restoration project for the Salton Sea. This approach does not result in mitigation obligations for the Salton Sea on the water agencies beyond addressing the impacts to the Salton Sea associated specifically with the water conservation and transfer project. Restoration of the Salton Sea would continue to be pursued as a separate project by the Bureau and the Salton Sea Authority.

F5-3

*Hydrology*

Sections 3.0 and 3.1 discuss adjustments to the Baseline for limits on water volumes to Priorities 1, 2, and 3 on the Colorado River. The discussion included in Appendix E (Imperial Irrigation Decision Support System) also refers to limiting priorities 1, 2, and 3 to 3.85 million acre-feet (MAF) in a normal year. The discussion needs to clarify what this means specifically for the modeling that was completed. This concept is also discussed in Appendix F (Salton Sea Accounting Model). Please be specific in the discussion to indicate how this entitlement enforcement affects the assumptions incorporated into the baseline projections used in the EIR/EIS (i.e., provide the specific water volumes involved) as compared to the existing inflows.

F5-4

Another aspect of the baseline that needs further clarification is the apparent simultaneous application of the cap on IID's water use (3.1 MAF/year) and a payback volume (59,210 acre-feet/year). If IID is assuming that the cap is adhered to by incorporating it into the baseline projection, it is not clear why the baseline would also include a payback volume of close to 60,000 acre-feet/year required by the Inadvertent Overrun Policy (IOP). In fact, Section 3.1.4.1 specifically states that the IOP is triggered when IID's annual diversion exceeds the cap. Please provide the specific conditions under which IID would have to comply with the cap and provide a payback volume through conservation on an annual basis.

F5-5

*Indirect Effects*

We have noted a lack of indirect effects analysis throughout the document. The brief discussion of the subregions excluded from analysis in Section 3.2.4.1 does not adequately address this issue, nor is it adequately addressed in Section 5.2.3 in Growth Inducement Impacts. Receiving Colorado River water at a higher priority increases the reliability of those volumes and has advantages for San Diego County Water Authority. The discussion needs to consider those benefits in the context of existing water needs and projected future needs in San Diego County. Given the frequency at which this topic was discussed in the recent public hearing in San Diego, the discussion provided is insufficient and will not meet the requirements of the NEPA. We request you analyze for this general land use impact in the Final EIR/EIS.

F5-6

*Operation and Maintenance Activities*

Section 3.2.4.1 includes a brief discussion of operation and maintenance activities. This discussion is insufficient to address this topic. Many of the impacts addressed in the HCP are related to operation

F5-7

**Response to Comment F5-4**

Please refer to the Master Response on *Hydrology—Development of the Baseline* in Section 3 of this Final EIR/EIS.

**Response to Comment F5-5**

Please refer to the Master Response on *Hydrology—Development of the Baseline* in Section 3 of this Final EIR/EIS.

**Response to Comment F5-6**

Please refer to the Master Response on *Other—Growth Inducement Analysis* in Section 3 of this Final EIR/EIS.

**Response to Comment F5-7**

A detailed description of IID's O&M activities and their effects on covered species is provided in the Habitat Conservation Plan. Additional detail on the effects of O&M activities on covered species has been added in the revised HCP (Attachment A of this Final EIR/EIS) and can be found in Chapter 3. (The Draft HCP is Appendix C of the Draft EIR/EIS.) The description of the O&M activities in the HCP is referenced in the general overview of the activities provided in the project description in the main body of the EIR/EIS. Similarly, the evaluations of the effects of O&M activities on covered species provided in the HCP are referenced in the EIR/EIS.

As noted in the Draft EIR/EIS (Page 3.2-102), IID's O&M activities would be the same under the Proposed Project and alternatives. Under the No Action Alternative, IID would continue to conduct O&M activities. While these activities would be expected to continue without the Proposed Project, the mitigation and avoidance measures described in the HCP and EIR/EIS would not be implemented under the No Action Alternative. As such, continuation of O&M activities is not a consequence of the Proposed Project, and therefore O&M would not have impacts to wildlife that are attributable to the Proposed Project. Effects of O&M activities on covered species are specifically evaluated because IID is requesting authorization from the USFWS and the CDFG for incidental take of these species that could occur with continuation of O&M activities.

F5-7

and maintenance activities. Although the intent of the HCP is to avoid, minimize and mitigate the impacts of the take to the maximum extent practicable, the EIR/EIS still needs to discuss the nature and extent of the impacts that are anticipated and how the HCP mitigates those impacts. Impacts to species not covered in the HCP should also be discussed.

*Biological Resource Impacts on the Lower Colorado River*

F5-8

The discussion of biological impacts on the Lower Colorado River should include all species and their habitats potentially impacted by the project and not be limited to the Southwestern Willow Flycatcher (*Empidonax traillii extimus*) and its habitat. This species was logically a focus of the Service's Biological Opinion on the Bureau's ESA consultation on the Secretarial Implementation Agreements, but other wildlife resources may be impacted by the project and should be considered in the broader analysis required of an EIS.

*Biological Resource Impacts in the Salton Sea*

F5-9

The Draft EIR/EIS assumes that a change in the invertebrate fauna of the Salton Sea as a result of increases in the salinity would not impact bird species that currently use the Salton Sea. We concur that many of the species that use the Salton Sea are also known to consume such salt-tolerant species as brine shrimp in other habitats. What is not provided in the Draft EIR/EIS is an assessment of changes in the abundance of the various invertebrate species in the Sea relative to the projected salinity changes. If there is a time lag between the loss of pileworms and increases in the abundance of the more salt-tolerant species to levels similar to that of pileworms now, significant impacts could occur to such species as the eared grebe (*Podiceps nigricollis*) and ruddy duck (*Oxyura jamaicensis*). This abundance aspect needs to be considered in addition to the assumptions made relative to the presence of salt-tolerant invertebrates in the Salton Sea as the salinity changes provided in the Draft EIR/EIS.

F5-10

The analysis of impacts to fish-eating birds does not address the scale of the mitigation. While we support providing mitigation throughout the term of the permit rather than a larger mitigation for the projected period of impacts for the covered fish-eating birds, the end result is that fewer fish-eating birds will be supported by the mitigation on an annual basis than use the Salton Sea now. This distinction should be thoroughly discussed so that readers of the EIR/EIS understand this fundamental premise of Approach 1. Also, other fish-eating species (e.g., Caspian Tern; *Sterna caspia*) are not addressed by the mitigation proposed in the HCP. The impacts to these species and offsetting mitigation should be discussed in the Final EIR/EIS.

F5-11

The analysis of impacts to fish-eating birds does not address the scale of the mitigation. While we support providing mitigation throughout the term of the permit rather than a larger mitigation for the projected period of impacts for the covered fish-eating birds, the end result is that fewer fish-eating birds will be supported by the mitigation on an annual basis than use the Salton Sea now. This distinction should be thoroughly discussed so that readers of the EIR/EIS understand this fundamental premise of Approach 1. Also, other fish-eating species (e.g., Caspian Tern; *Sterna caspia*) are not addressed by the mitigation proposed in the HCP. The impacts to these species and offsetting mitigation should be discussed in the Final EIR/EIS.

F5-12

The impact of the project on the depth of the Salton Sea and associated changes in the eutrophic state of the Sea are not adequately addressed in the Draft EIR/EIS. The worsening of the eutrophic state of the Sea could have an effect on the frequency and magnitude of bird disease episodes at the Sea.

F5-13

Selenium impacts to the wildlife resources using the Salton Sea are not thoroughly evaluated in the Draft EIR/EIS. While loading is not expected to increase as a result of the project, the increased concentrations at the inflows associated with on-farm and system conservation may result in increased impacts to fish and wildlife. In addition, the decreased depth of the Sea associated with the project may alter the cycling and/or biological availability of selenium in the system. This has not been

**Response to Comment F5-8**

The evaluation of impacts to biological resources along the Lower Colorado River uses a habitat-based approach. Effects to different habitat types are quantified and effects to wildlife using these habitats are inferred from changes in habitat. While the southwestern willow flycatcher was a specific focus of the evaluation, other special-status species also were considered (see Impacts BR-5, -6 and -7). The analysis assumed that if the underlying habitat was adequately protected or mitigated for the most sensitive species (i.e., special-status species), it would be adequately protected or mitigated for less habitat-sensitive species. Table 3.2-34 in the Draft EIR/EIS presents the primary association and use of vegetation communities by selected wildlife species in the study area, showing that several species' habitat association overlaps sufficiently with that of the willow flycatcher. Impact BR-5 lists the other special-status species similarly affected by the potential loss of cottonwood-willow habitat.

Habitat-based approaches are commonly used to evaluate impacts for NEPA/CEQA evaluations. A more detailed species-specific analysis (as opposed to a habitat-based approach) is not necessary to reach meaningful conclusions regarding the potential impacts of the Proposed Project on biological resources along the Lower Colorado River.

**Response to Comment F5-9**

If there is a time lag between the loss of pileworms and increases in the abundance of more salt-tolerant species, impacts to such species as the eared grebe and ruddy duck could occur. However, it is unknown whether such a time lag would occur. The specific responses of invertebrate populations of the Sea to increased salinity are impossible to predict with certainty. It is likely that the abundance of pileworms and other invertebrate species used as forage by grebes and ruddy ducks varies annually and that effects on invertebrate abundance due to changes in salinity would be continuous, rather than catastrophic at some threshold. This would allow species such as the eared grebe and ruddy duck to exploit whichever forage species happens to be dominant through time. In addition, eared grebes and ruddy ducks likely forage on other invertebrate species in addition to pileworms, brine shrimp, and brine flies, such that the loss of pileworms would not be immediately reflected in a decline in grebe and ruddy duck abundance.

### **Response to Comment F5-9 (continued)**

Exactly how the vertebrate and invertebrate communities of the Salton Sea will respond to increases in salinity, and in turn how birds will respond, cannot be predicted. Despite historical differences, Mono Lake and the Great Salt Lake provide the best examples of what the Salton Sea might look like as its salinity increases. Migratory bird use of both of these lakes is very high, suggesting that migratory bird use will continue to be high at the Salton Sea. The exact species composition and relative abundance of migratory birds using the Salton Sea probably will change over time as food resources change at the Sea and bird populations respond to factors in other portions of their ranges. It is important to recognize that the composition and abundance of birds at the Salton Sea have historically fluctuated and transitioned over time. For example, black skimmers were unknown at the Salton Sea until 1972, but since then the population nesting at the sea has increased considerably. Double-crested cormorants nested at the sea in small numbers until 1999, when a large breeding colony became established on Mullet Island. Use of the Salton Sea by migrating and wintering white pelicans appears to have been low until the 1980s, after which the number of birds using the Sea increased.

### **Response to Comment F5-10**

Approach 1 of the Salton Sea Conservation Strategy has been eliminated from consideration. Implementation of the revised Salton Sea Habitat Conservation Strategy would avoid accelerating changes in fish abundance attributable to water conservation and transfer and thereby avoid project-related impacts to piscivorous birds. See Master Response for *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS.

### **Response to Comment F5-11**

Approach 1 has been eliminated from consideration. The Salton Sea Habitat Conservation Strategy would avoid accelerating changes in the fish populations in the Salton Sea that are attributable to the water conservation and transfer project. See the Master Response for *Biology—Approach to the Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS.

### **Response to Comment F5-12**

It is not clear that a shallower Sea will be more productive. Total nutrient loading will be reduced with the conservation program and possible enhanced resuspension of surface sediments could contribute nutrients to stimulate more algae growth. Alternatively, suspended sediments may reduce average light exposure to the algae community and thus reduce productivity (light reduction to algae is a likely result of enhanced mixing of the water column, and is exacerbated by entrained sediment). In addition, the change in productivity of the Sea in relation to decreased average depth is likely to be insignificant as the Sea is now and has always been highly eutrophic. Regardless, as discussed in the text, there is no known quantitative link between Sea productivity and avian disease that would allow us to predict changes in incidence of disease (even if we could predict changes in the Sea's productivity).

### **Response to Comment F5-13**

Please refer to the Master Response on *Biology—Approach to the Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS.

F5-13

considered adequately in the Draft EIR/EIS. Only Alternative 4 results in an overall reduction of loading of selenium to the Salton Sea that may result in a reduction in the biological accumulation of selenium in the system.

*Indian Trust Assets*

F5-14

Per our recent government-to-government consultation with the Torres-Martinez Desert Cahuilla Indians, the Indian Trust Assets section needs to be expanded to include a more specific evaluation of impacts to that Tribe's trust assets. Tribal lands are currently submerged under the Salton Sea and will be affected by the Project. Their lands will be exposed and could now be contaminated as a result of sediment deposition. These exposed lands may also serve as a source of dust particles that could impact the air quality for the Tribe. Certain actions called for in the HCP will also affect tribal lands (extension and connection of the pupfish drains), and these actions should be evaluated relative to the Indian Trust Assets in the area. Potential impacts to the groundwater resources used by the Tribe as a result of Coachella Valley Water District's (CVWD) receipt and use of additional Colorado River water as part of the Quantification Settlement Agreement will also need to be thoroughly evaluated given that CVWD's anticipated Programmatic EIR has not been available to the Tribe during the comment period for this Draft EIR/EIS. A mechanism will need to be provided that will allow for tribal review of this new information and provide for their comments on this information to be incorporated into the public record for the water transfer project.

*Environmental Justice*

F5-15

Based on the information provided, it does appear that the area along the Colorado River and Salton Sea have a higher percentage of minority and low-income populations, including Indian Tribes, than the counties as a whole in this region. The Draft EIR/EIS recognizes that there are impacts from the proposed project to both the physical environment and of a socioeconomic nature. However, the Draft EIR/EIS generally concludes that impacts would affect each community (minority and non-minority) to approximately equal degree and therefore would not have a disproportionate effect on any low-income and minority populations. We do not understand how this conclusion was reached. Generally speaking, the Draft EIR/EIS has described the impacts of the proposed action and alternatives on low-income and minority populations. However, even though it seems that there is a higher percentage of low-income and minority populations in certain regions in the counties that would be disproportionately impacted by the proposed action, the Draft EIR/EIS appears to conclude that no disproportionate effects to low-income and minority communities are expected. Based on the appearance of potential disproportionate effects from a percentage point of view, a written discussion is necessary to support the document's conclusion. We suggest that data collected from the Census Bureau and/or other appropriate sources be included to reflect the total breakdown of each minority and low-income group compared with non-minority groups to support the findings.

F5-16

Impacts to low-income and minority populations under Approach 1 have not been described. The document at one place states that this approach has been developed to a programmatic level, and the nature and extent of physical impacts are not known at this time. Therefore, impacts to low-income and minority populations have not been identified thus far under this approach. It seems that even at a

**Response to Comment F5-14**

Each of the comments raised have been addressed in the revised Section 3.9, Indian Trust Assets. Changes are indicated in subsection 3.9 under Section 4.2, Text Revisions of this Final EIR/EIS.

The Tribe, because of its government-to-government relationship with the Department of Interior, can continue dialog with the Department on these issues outside the context of the EIR/EIS public review process. Also, to the extent the Tribe would like its comments to be part of the administrative record for the NEPA process, the Tribe should comment on the Final EIS after it is filed. Their comments will be considered prior to a Record of Decision, and will be part of the record.

**Response to Comment F5-15**

In response to comments, the text of Section 3.15 has been revised. The changes are indicated in subsection 3.15 in Section 4.2, Text Revisions in this Final EIR/EIS.

**Response to Comment F5-16**

Please refer to the Master Response on *Biology—Approach to the Salton Sea Habitat Conservation Strategy*.

Regional Director, Bureau of Reclamation

5

programmatic level, impacts should generally be described recognizing that details should be provided if and when a specific action is proposed and analyzed.

We appreciate the opportunity to provide comments on the Draft EIR/EIS and an update on the status of the HCP process. We look forward to continuing working closely with your agency, and the water districts to provide you with the best possible recommendations and analyses required to complete the NEPA and Endangered Species Act processes. Please contact me or Miel Corbett of my staff at (916) 414-6464 or Carol Roberts at the Carlsbad Fish and Wildlife Office (760-431-9440 ext. 271) if you have any questions you would like to discuss.

Letter - F5  
Page 5

**Response to Comment F5-17**

Comment noted.

Enclosures (1)

cc: Elston Grubaugh, Imperial Irrigation District  
Bruce Ellis, Bureau of Reclamation, Phoenix Area Office  
Glenn Black, California Department of Fish and Game

## Enclosure 1.

Letter - F5  
Page 6

## Draft HCP Status

We would like to provide you with an update on the current status of the HCP. Great progress has been made in the development of the HCP for the water conservation and transfer project since the concepts were initially presented to us in March of 2001. IID is to be congratulated for their efforts in this endeavor. We have refined the document further since its release to the public for review, particularly in regards to the process of developing monitoring and adaptive management procedures. We have not seen all of the modifications to the document language discussed to date, but we look forward to seeing an updated version of the HCP as we move forward with the formal application process for their Incidental Take Permit (ITP). The topics for which issues remain are provided below for your information.

In our recent discussions with IID on Approach 1 for the Salton Sea, they have proposed major changes to that approach as compared to the description in the Draft HCP and EIR/EIS out for public review. IID has proposed stocking fish to a reduced number of ponds and not relying on natural reproduction of fish within the ponds. The IID is proposing that the required fish (by weight) could be stocked to 500 acres of ponds rather than 5,000 acres as proposed in the Draft HCP. Given the water requirements of the ponds and the purpose of the project (water conservation and transfer), IID has proposed the use of New River in the ponds rather than canal water. By raising the flow through the system, it is their opinion that selenium accumulation can be minimized. We have several concerns with this modified proposal that need to be considered in both the NEPA documents and the HCP: (1) increasing the density of foraging birds with the reduction in pond acreage may promote some avian diseases; (2) increasing bird density may result in interspecific (and possibly intraspecific) interference of foraging activities; (3) the New River may carry constituents that are toxic to fish so measures would need to be developed to prevent such materials from entering the ponds and/or respond to events that did occur by removing dead fish and re-stocking the ponds; and (4) the New River may carry pathogens that could impact fish and birds directly or sicken fish resulting in outbreaks of avian botulism when the fish are consumed by birds. These issues need to be considered in the finalization of the HCP, and a more complete analysis (including location information) will be required for the Final EIR/EIS if additional NEPA documents are not going to be developed for this aspect of the HCP.

Conversion of land uses by IID does not include conversion of lands leased by the Sonny Bono Salton Sea National Wildlife Refuge to some other use. This specific land use conversion cannot be covered because the impacts to the covered species have not been analyzed nor has appropriate mitigation been provided to address any such impacts. Other aspects of land use and leasing have yet to be resolved. Conversion of land uses on IID land is also problematic in general because not all of the current and anticipated uses are covered activities nor has a specific analysis of the impacts of such conversions been provided within the HCP and the Draft EIR/EIS.

IID has agreed to develop alternative nesting habitat for Black Skimmers (*Rynchops nigra*) and Gull-billed Tern (*Sterna nilotica vanrossemei*) if Approach 1 is taken for the Salton Sea. However, nesting habitat for the Double-crested cormorant (*Phalacrocorax auritus*) will also be impacted by the decreased elevation of the Salton Sea and has not been addressed. Direct and indirect project impacts

**Response to Comment F5-18**

Please refer to the Master Response for *Biology—Approach to the Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS.

**Response to Comment F5-19**

The HCP has been revised to specifically exclude conversion of land owned by IID that is leased to the USFWS as a covered activity. The HCP also has been revised to specifically identify land uses that are covered activities as follows: "Land uses that constitute covered activities are as follows:

- Installation and implementation of water conservation measures, including fallowing
- Installation and operation of conveyance and drainage facilities
- Creation and management of fish or wildlife habitat
- Construction and operation of a fish hatchery
- Implementation of any other environmental mitigation associated with the IID Water Conservation and Transfer Project, this HCP or the QSA."

**Response to Comment F5-20**

The Draft EIR/EIS has been revised to more specifically address effects to double-crested cormorants from reductions in the water surface elevation of the Salton Sea. These revisions are found in this Final EIR/EIS in subsection 3.2.4.3 under Section 4.2, Text Revisions.

In addition, the revised Salton Sea Habitat Conservation Strategy would avoid accelerating exposure of nesting/roosting features and changes in fish abundance. See the Master Response for *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 3 in this Final EIR/EIS.

F5-18

F5-19

F5-20

F5-20

to a significant nesting population of Double-crested cormorants is not adequately evaluated in the EIR/EIS and should be analyzed in the Final EIR/EIS including a discussion of mitigation measures to avoid, minimize or offset impacts to this species.

F5-21

IID and the Wildlife Agencies have yet to determine and agree upon the caps on the water requirements for each of the mitigation strategies. Given the assurances provided under the Service's No Surprises Policy, these determinations will need to be made and included in the HCP and analyzed in the Final EIR/EIS.

Desert Pupfish Strategy 2 may not be adequate in regards to the lack of a specific selenium action level. The Service is conferring internally to determine what changes to this strategy may be necessary.

F5-22

There is no mitigation proposed to offset impacts to covered species using agriculture, other than to continue to encourage agricultural activities in Imperial Valley. Some species may be benefitted by actions associated with other mitigation measures (e.g., Aleutian Canada geese (*Branta canadensis leucopareia*) will likely use managed marsh created as part of the drain habitat conservation strategy), but there are no such measures that offset the impacts to other species using agriculture (e.g., Mountain Plover (*Charadrius montanus*) and Ferruginous Hawk (*Buteo regalis*)). Additional consideration will need to be given to the development of appropriate mitigation for these species.

F5-23

Herbicide use as a covered activity is problematic because we are lacking adequate species-specific information for a proper analysis in the HCP and the EIR/EIS of the effects of herbicides on the 96 species proposed for coverage under the Water Transfer HCP.

F5-24

The conservation strategy proposed for the "Other Covered Species" currently lacks adequate specificity to address our permit requirements. It is not clear if adequate information will be available within the time frame we have for permit issuance to include these species on the ITP.

F5-25

Third party beneficiaries must have a contractual relationship with IID in order to be covered by the incidental take permit. A specific mechanism has not yet been developed. IID has committed to working with the Regional Solicitor's Office to develop language that would address this need in the agreements that the farmers will sign in order to participate in the water conservation program.

F5-26

The Service has not seen documentation of IID's ability to fund the HCP. This will be required prior to issuance of the ITP.

F5-27

We have not seen an update of the language on changed and unforeseen circumstances. The previous language that considered several events to be changed circumstances but impacts from those events to be unforeseen was not adequate. We look forward to new language that clarifies the distinction between the two and provides IID's proposed responses.

**Response to Comment F5-21**

Since the release of the Draft EIR/EIS and HCP, IID has eliminated Salton Sea Approach 1 from consideration. Refer to Master Response for *Biology—Approach for the Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS. The revised Salton Sea Approach defines the procedure for annually calculating the amount of mitigation water that will be provided to the Sea until the year 2030. As such, the amount of water conservation, the type of conservation, and the salinity of the Salton Sea will determine the amount of water necessary to fulfill the mitigation. In addition to the water requirements for the Sea, IID has committed to mitigation strategies that require the use of water (i.e., managed marsh and native tree habitats). The requirements to maintain the function of these created habitats will dictate the water needs.

**Response to Comment F5-22**

Based on discussions with representatives from the U.S. Fish and Wildlife Service and California Department of Fish and Game, the HCP has been revised to include a measure for species associated with agricultural fields.

**Response to Comment F5-23**

Comment noted.

**Response to Comment F5-24**

The ESA allows conditional coverage, which is proposed for 25 species.

**Response to Comment F5-25**

Comment noted.

**Response to Comment F5-26**

IID will commit to including funds in the annual budget to fund the HCP. USFWS has accepted this approach in other HCPs.

**Response to Comment F5-27**

The changed and unforeseen circumstances section of the Final HCP (see Attachment A in this Final EIR/EIS) has been revised to reflect input from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the Draft HCP.