from various long-term and short-term studies conducted throughout California and the West over the past 18 years. Citations within Dr. Warnock's comments are based on the following bibliography.

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i. DEIR/DEIS Overview

G25-33

The DEIR/DEIS fails to adequately address how wildlife will be able to respond to an accelerated decline of conditions at the sea. The DEIR/DEIS assumes that the proposed habitat conservation plans (which may take up to 15 years to develop) will protect bird populations on the same temporal scale as the proposed water transfer will impact species, yet this may not be the case and the Proposed Plan offers no alternatives. It also assumes that restoration projects will do what they are designed to do (for instance, created marshes will attract the same species being impacted by water diversions), yet this is another undocumented assumption. For instance, there is reason to believe that Black Rails will not respond to the proposed marsh construction plans (see comments below). The DEIR/DEIS assumes that water conservation actions taken in the agricultural fields will not significantly impact species because agricultural habitat is abundant, despite the fact that the Proposed Project could reduce the amount of available agricultural habitat by approximately 15%. Given that potentially one third to one half of the world's population of Mountain Plovers winter in the agricultural fields of the Imperial Valley alone (see below), with a host of other species dependent on the fields (Shuford et al. 2000), this may be a naive assumption. Finally, in a number of places, the DEIR/DEIS assumes that the conditions at the Salton Sea created by the accelerated impacts of the proposed water transfer will not have significantly different effects on wildlife at the Salton Sea compared to a no-action alternative, yet this is also undocumented. Given the documented international importance of the Salton Sea and its surrounding lands, particularly to birds (i.e. Shuford et al. 2000, Patten et al. in press, Shuford et al. in press), the number of untested assumptions that this document relies on to justify no significant impact conclusions is troubling.

Most of these comments pertain to Alternatives 2-4 also.

ii. Section 3.2 Biological Resources (Pages 3.2-1 through 3.2-203)

(a) Impact BR - 1 through Impact BR - 7

G25-34

The current evaluation of the potential impacts of the water transfer on various Lower Colorado Region (LCR) wetlands and wetland associated habitats assumes that restoration of habitat would compensate for direct habitat loss. However, there is no documentation that restorations will actually work in attracting birds. Seep areas with shallow water are particularly important for Black Rails (Evens et al. 1991, Flores and Eddleman 1993, Eddleman et al. 1994) in the LCR and Salton Sea area, and the decline of Black Rails in this region is likely the result of seeps being eliminated through lining of canals and pumping (Evens et al. 1991). Current managed wetlands in the LCR and Salton Sea area have few Black Rails, probably because water levels in managed wetlands around the sea are maintained at deeper levels than Black Rails prefer, and maintaining very shallow water on marsh sites is difficult (Eddleman et al. 1994). If restoration projects are less than successful, impacts on rails and other species may be significant.

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Response to Comment G25-33

Under the Drain Habitat Conservation Strategy, managed marsh would be created in 3 phases and could take up to 15 years to be completed. Creation of managed marsh addresses potential impacts of IID's covered activities on covered species using drain habitat, not effects to covered species at the Salton Sea. The primary potential impact to covered species in the drains relate to IID's O&M activities rather than effects attributable to water conservation (see Section 3.5 of the HCP). To the extent that species have colonized and use drain habitats, they have done so coincidentally with IID's O&M activities that have been ongoing for nearly 100 years. Water conservation could affect some species through changes in water quality and small changes in plant species composition. Any such changes would occur gradually over a period of about 20 years as the water conservation and transfer program ramps up; this is about the same temporal scale over which the managed marsh would be created.

A reduction in the amount of agricultural land in active production because of fallowing could have population-level impacts to mountain plover and other species using agricultural fields if wintering habitat is a limiting factor for the small population. As explained in Section 3.8 of the HCP, for mountain plover and other covered species that are associated with agricultural fields, the available information on species abundance and crop availability does not show any discernible relationship, which suggests that wintering habitat does not limit the population. Furthermore, for mountain plover, the loss and degradation of breeding habitat appears to have been the primary contributor to the decline in this species (USFWS 1999c; Knopf 1996). In addition, 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 strictly associated with agricultural fields.

There is no basis to assume that biological resources of the Salton Sea would respond in a qualitatively different manner to increased salinity under the Proposed Project than under the No Project alternative.

Response to Comment G25-34

Your comment is noted. The previous Draft EIR/EIS has been revised so that the design of the mitigation backwaters will take into consideration the habitat requirements of the rail species. The change is indicated in this Final EIR/EIS in subsection 3.2 under Section 4.2, Text Revisions.

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G25-35

(b) IMPACT BR - 10 REDUCED FLOWS IN DRAINS AND IMPACT BR - 14 INSTALLATION OF SEEPAGE RECOVERY SYSTEMS

Reduced flows in drains that result in smaller and fewer seeps will likely significantly impact Black Rails as has already been documented for the region (Evens et al. 1991).

(c) IMPACT BR - 16 THROUGH IMPACT BR - 19 CONSERVATION EFFORTS IN AGRICULTURAL FIELDS AND IMPACTS ON WILDLIFE

G25-36

None of these evaluations adequately address potential impacts on Mountain Plovers, a federally proposed Threatened species (Anonymous 1999). During their non-breeding season, these birds spend most of their time on agricultural fields (Knopf 1996, Shuford et al. 2000); in the Imperial Valley, plovers use a wide variety of agricultural fields, ranging from bare fields to ones with sparse amounts of vegetation, usually with vegetation less than 5 cm (Shuford et al. 2000). A survey of the Imperial Valley for Mountain Plovers during December 1999 found 3758 birds, approximately 42% of the estimated world population of Mountain Plovers (Knopf 1996, Brown et al. 2001). Other species of conservation concern, like the Long-billed Curlew and White-faced Ibis, use the agricultural fields of the Imperial Valley in large numbers (Shuford et al. 2000; Shuford, Warnock and McKernan in prep.) and would also likely be impacted by changing agricultural practices and fallowing of land (up to 15% of all agricultural land in the Imperial Valley, DEIR/DEIS 2002). A special conservation plan (as done for the Burrowing Owl) should be formed for Mountain Plovers and other sensitive species using the agricultural fields with alternative actions to be taken if populations of these birds begin to decline due to changes in agricultural practices.

(d) IMPACT BR - 26 WATER QUALITY CHANGES IN THE DRAINS AND IMPACTS ON SENSITIVE SPECIES

G25-37

The DEIR/DEIS suggests selenium levels will rise in the drains and this could impact Clapper Rails (as well as other species); the plan suggests that implementation of the HCP would reduce this potential to less than significant. However, no support is given that birds will actually move to protected areas. This needs to be addressed.

(e) IMPACT BR - 29 WATER CONSERVATION PRACTICES COULD AFFECT SPECIAL STATUS SPECIES ASSOCIATED WITH AGRICULTURAL FIELDS

G25-38

DEIR/DEIS concludes no significant impact, but as discussed above (Impact BR - 16 through Impact BR - 19), there is ample reason to doubt this conclusion.

(f) IMPACT HCP-BR-32 CREATION OF MANAGED MARSH HABITAT WOULD BENEFIT WILDLIFE ASSOCIATED WITH DRAIN HABITAT.

G25-39

Creation of marsh habitat is anticipated to take 15 years to complete, but water transfer would take place in a much shorter time frame. DEIR/DEIS needs to evaluate how the interval between when water is transferred and when marshes are created will impact wildlife. Most animals cannot wait 15 years.

Response to Comment G25-35

There are no recent records of black rails drain habitats within the IID Service Area that are dominated by tamarisk and common reed. The amount and composition of existing vegetation in the drains is not expected to change appreciably under the Proposed Project. Surveys for black rails will be conducted as part of the HCP. If black rails are found using drain habitats, the species-specific habitat requirements will be incorporated into the design and management of the managed marshes. Considering that substantial changes in drain vegetation are not expected, the low probability for black rail occurrence in the drains, and the existence of a mitigation, monitoring and adaptive management program to address black rails, it was determined that this species would not be significantly adversely affected by the Proposed Project.

Seepage communities in the Project Area are limited to a few areas along the All American Canal and the East Highline Canal. Water conservation activities under the Proposed Project would not affect the seepage communities along the All American Canal. Installation of seepage recovery systems are proposed along the East Highline Canal as part of the Proposed Project. These seepage communities consist of diverse plant species, but arrowweed, common reed, and tamarisk are the most common species, with mesquite, cattails, and a few cottonwoods present in some areas. These communities do not provide suitable habitat conditions for black rails. Therefore, no impacts to black rails are anticipated from installation of seepage recovery systems along the East Highline Canal.

Response to Comment G25-36

A reduction in the amount of agricultural land in active production because of fallowing could have population-level impacts to mountain plover and other species that use agricultural fields if wintering habitat is a limiting factor for the population. As explained in Section 3.8 of the HCP, for mountain plover and other covered species that are associated with agricultural fields, the available information on species abundance and crop availability does not show any discernible relationship, suggesting that wintering habitat does not limit the population. Furthermore, for mountain plover, the loss and degradation of breeding habitat appears to have been the primary contributor to the decline in this species (USFWS 1999c; Knopf 1996). In addition, based on discussions with representatives from the USFWS and CDFG, the HCP has been revised to include a measure for species strictly associated with agricultural fields.

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Response to Comment G25-37

Please refer to the responses given for Comment G4-14 and Comment R5-62.

Response to Comment G25-38

Please refer to the response given for Comment G4-13. In addition, the HCP has been revised to further describe the effects of specific water conservation practices on species covered by the HCP (see Section 3.8).

Response to Comment G25-39

Under the Drain Habitat Conservation Strategy, managed marsh would be created in 3 phases and could take up to 15 years to be completed. Creation of managed marsh addresses potential impacts of IID's covered activities on covered species using drain habitat, not effects to covered species at the Salton Sea. The primary potential impact to covered species in the drains relate to IID's O&M activities rather than effects attributable to water conservation (see Section 3.5 of the HCP). To the extent that species have colonized and use drain habitats, they have done so coincident with IID's O&M activities that have been ongoing for nearly 100 years. Water conservation could affect some species through changes in water quality and small changes in plant species composition. Any such changes would occur gradually over a period of about 20 years as the water conservation and transfer program ramps up; this is about the same temporal scale over which the managed marsh would be created.

(g) HCP (Salton Sea Portion) Approach 2: Use of conserved water as mitigation.

G25-40 DEIR/DEIS suggests up to 15% of agricultural lands could be fallowed. Need to address Mountain Plover issue (see comments above).

(h) Impact BR-42 Reduced sea elevation could affect the acreage of adjacent wetlands dominated by Tamarisk and shoreline strand.

G25-41 DEIR/DEIS suggests that no significant impacts will occur despite the potential loss of much of the vegetation associated with the riparian zone that would impede the use of wildlife nursery sites (see 3.2.4.2 Significance Criteria DEIR/DEIS). Colonial waterbirds nested at 21 sites along the Salton Sea in 1999 (Shuford et al. 2000). Much of the nesting occurred in *Tamarix*. Water levels under the Proposed Project would undoubtedly drop faster than *Tamarix* would recolonize which has the potential to significantly impact colonial breeders.

(i) Impact BR - 44. Changes in the invertebrate community could affect shorebirds and other waterbirds.

G25-42 DEIR/DEIS suggests that a less than significant impact will occur to shorebirds and other waterbirds when the invertebrate community of the sea collapses to a few species. Mono Lake is provided as an example of what the sea might look like if the invertebrate community changes to one found in a hypersaline system (brine shrimp and flies). Mono Lake attracts large numbers of a few species, but it does not attract large numbers of a lot of species as does the Salton Sea. For instance, very few Marbled Godwits are found at Mono Lake (D. Shuford pers. comm.), whereas the Salton Sea attracts relatively large numbers (1000 + birds during most times of the year, Shuford et al. 2000). Mono Lake attracts very few Black-necked Stilts (D. Shuford pers. comm.), whereas the Salton Sea attracts large numbers (over 15,000 in August 1999, Shuford et al. 2000). Overall, Mono Lake does not hold many waterfowl, while the use of the Salton Sea by waterfowl is diverse (Shuford et al. 1999, 2000). In 1999, Ruddy Duck numbers in the winter ranged over 30,000 birds at Salton Sea, whereas winter counts of Ruddy Ducks at Mono Lake generally count fewer than 1,000 birds (DEIR/DEIS 2002). Changes in the invertebrate community will have significant impacts on the shorebirds and other waterbirds that use the Salton Sea.

(j) Impact BR - 46. Reduced fish abundance would affect piscivorous birds.

G25-43 DEIR/DEIS suggests that a less than significant impact will occur to the piscivorous birds. The proposed project will accelerate various processes that will negatively impact fish-eating birds at the Salton Sea (reduced water levels, reduced fish supplies). No discussion is made of what will happen to the largest breeding colony of Double-crested Cormorants in California and one of the largest in the West (Carter et al. 1995). Double-crested Cormorants that breed at the Salton Sea are birds from a distinct subspecies, *Phalacrocorax auritus albociliatus*, and this subspecies does not appear to go east of the Rockies (Hatch 1995, Carter et al. 1995). The California coastal population is estimated at only 10,000+ pairs. The 5425 nesting pairs documented at the Salton

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Response to Comment G25-40

Please refer to the response given for Comment G25-36.

Response to Comment G25-41

As described in the DEIR/EIS, Shuford et al. (2000) reported that most of the 21 colonial bird nest sites were concentrated near the Whitewater River mouth at the north end of the Sea or between and including the New and Alamo River deltas along the southeastern shoreline. Under the Proposed Project, the rivers would continue to flow to the sea and provide fresh water that would maintain tamarisk along the banks of the rivers. Thus, trees and large shrubs in the deltas and at the river mouth that are used by herons, egrets, and other bird species for communal rookeries would persist.

Some colonial nest sites are located in or near areas designated as shoreline strand. Existing areas of shoreline strand could be lost as the surface elevation of the Sea recedes although, as described in the Draft EIR/EIS, it is uncertain whether and to what degree shoreline strand communities would be affected as the surface elevation of Sea declines. The surface elevation of the Salton Sea is projected to decline with or without implementation of the water conservation and transfer project, and if shoreline strand areas are sensitive to the surface elevation of the Salton Sea, changes in the extent of shoreline strand would take place irrespective of the Proposed Project. Therefore, potential changes in shoreline strand and adjacent wetlands were considered a less than significant impact.

The Proposed Project also includes implementation of the Salton Sea Conservation Strategy of the HCP. Under the HCP, IID would supply water to the Salton Sea such that the salinity did not exceed 60 ppt until 2030. As described in the Master Response for *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 3 of this Final EIR/EIS, supplying this water to the Sea would maintain the surface elevation at a higher level than would be the case in the absence of the Proposed Project. Maintaining a higher surface elevation means that any changes in the extent of shoreline strand potentially occurring as the surface elevation declines would be delayed, so the habitat values of these areas would be maintained longer than would be the case under the No Action Alternative. Furthermore, after 2030, IID would monitor shoreline strand and adjacent wetland areas and compensate for net changes relative to existing conditions by acquiring or creating

Response to Comment G25-41(continued)

native tree habitat. Under the No Action Alternative, there would be no compensation for reduction in the acreage of shoreline strand and adjacent wetlands. Therefore, relative to the No Action Alternative, the Proposed Project would have beneficial effects.

Response to Comment G25-42

It is acknowledged that the current level of use of Mono Lake and the Salton Sea by certain species of birds differs. The reasons for the differences, however, are uncertain, and it is not appropriate to conclude that because a particular species currently uses Mono Lake at a low level, it will therefore use the Salton Sea at a low level when the sea transitions to a system dominated by halotolerant invertebrates. The level of use of a particular resource by a particular species is influenced by many factors, of which the composition of the food resource is only one factor. The comparison of use of Mono Lake by various bird species that also use the Salton Sea was intended to show that: 1) many species using the Salton Sea can and do find food at Mono Lake, and 2) a transition to a more saline environment would not be expected to eliminate the Salton Sea as an important migratory stopover for birds.

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.

Under both the No Action and Proposed Project, the salinity of the Sea will increase, resulting in transitions in the aquatic vertebrate and invertebrate communities and in the avian community exploiting these resources. There is no basis for assuming that biological resources of the Salton Sea would respond in a qualitatively different manner to increased salinity under the Proposed Project than under No Action conditions.

Response to Comment G25-43

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 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.

G25-43

Sea in 1999 would represent over 50% of the entire California coastal population. The accelerated loss of water in the sea under the proposed project will provide this population and other fish-eating birds significantly less time to find other suitable breeding sites (if this is even possible) than the baseline project. No discussion is made of this.

(k) IMPACT BR - 48. REDUCED SEA ELEVATION COULD AFFECT NESTING/ROOST SITES.

G25-44

DEIR/DEIS suggests that a less than significant impact on biological resources will occur. One species that is not adequately evaluated is the Snowy Plover. The Salton Sea supports the largest inland breeding populations of Snowy Plovers in the west (Shuford et al. 2000). Changes to the slope of the shoreline, if it becomes steeper, could negatively impact the breeding birds and this should be evaluated, particularly on the SE, S, and SW sides of the sea where plovers are known to concentrate and breed.

For most of the colonial breeders, there is little discussion about what the potential impacts of having no snags in the water will do to breeding populations. The DEIR/DEIS makes the statement that "Because of the small temporal difference in the snag connecting to the mainland, and considering that herons and egrets nest and roost in snags that are not surrounded by water, the Proposed Project would not significantly affect communal rookeries in snags or trees at the Salton Sea" (p. 3.2-157). No documentation is given to support this statement. Currently, most arboreal breeders at the sea are nesting either over the water or next to it at places like *Tamarix* groves along the mouth of the New and Alamo rivers (Shuford et al. 2000).

(l) IMPACT BR - 49. REDUCED SEA ELEVATION COULD AFFECT MUDFLAT/SHALLOW WATER HABITAT

G25-45

DEIR/DEIS suggests that a less than significant impact on biological resources will occur. It has been well demonstrated that water depth can be predictive of waterbird species (Velasquez 1992, 1993; Elphick and Oring 1998). Shorebirds generally do not feed in water at depths much greater than about 10-15 cm (Warnock et al. in prep.), and most prefer water depths under about 4 cm (Isola et al. 2000), except for those that swim like the phalaropes. The bathemetric models are probably not accurate enough to evaluate changes in shallow water habitat of less than 1 foot. It is especially troubling that the shallow impounded areas around the southern and SE side of the sea will be rapidly lost under the Proposed Project since the majority of shorebirds (over 75%, Warnock, Shuford and Molina in prep.) at the Salton Sea are found there. Effects on shallow water habitat in this area as well as at the north end of the sea should be better evaluated.

VII. MITIGATION FOR IMPACTS ON BIOLOGICAL RESOURCES IS FLAWED

G25-46

As mitigation for the project's impacts to the biological resources of the Salton Sea, the DEIR inappropriately relies upon two concept-level "approaches," "as means to seek input on which approach, or combination of approaches, is most appropriate." (2-49) The DEIR notes that "If Approach 1 is selected for implementation for the HCP, additional details will need to be developed and subsequent environmental documentation may be required to evaluate the potential impacts." (3.0-3) If HCP Approach 2 were implemented, approximately 75,000 total acres of "fallowing would be required to generate the water necessary to offset changes in inflow

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Response to Comment G25-44

Areas currently used by snowy plovers for nesting will become farther removed from the water as the water surface elevation of the Salton Sea declines. A decline in the water surface elevation is projected to occur under both the Proposed Project and the No Project alternative. Thus, to the extent that distance to water influences suitability of breeding sites for snowy plovers, existing nesting areas will become unsuitable under both the Proposed Project and the No Project alternative and therefore is not an impact attributable to the Proposed Project.

The commenter suggests that at a reduced sea elevation, near shore areas will be too steep to be suitable for snowy plover nesting. Bathymetric data show a general pattern of increasing acreage of shallow sloped areas with declining surface elevation (see response to comment G25-82). At most of the lower elevations, the amount of shallow sloped areas (as indicated by acreage less than 1 foot) is greater than at the current elevation. This information suggests that suitably sloped areas would be available for snowy plovers at lower elevations.

Impacts of the Proposed Project are assessed relative to the No Project alternative. As described under the No Project alternative, snags in the Salton Sea that are currently surrounded by water would no longer be surrounded by water as the water surface elevation declines. Herons and egrets could abandon use of snags as nesting and roosting sites when they are no longer surrounded by water. This effect could occur under both the No Project and the Proposed Project, the only difference being that it could happen 3 years earlier under the Proposed Project. Thus, the potential for abandonment of snags as nesting and roosting sites is not a consequence of the Proposed Project and therefore is not considered a significant impact of the Proposed Project. Further, herons and egrets are known to nest in snags and trees that are not surrounded by water (Kaufman 1996; Shuford et al. 2000), suggesting that birds may continue to use snags at the Salton Sea when they are no longer surrounded by water. Finally, with implementation of the Salton Sea Conservation Strategy, the acceleration of exposure of nesting/roosting sites would be avoided. See the Master Response on *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 3 in this Final EIR/EIS.

Response to Comment G25-45

The bathymetric data are not accurate enough to precisely predict the amount of shallow water habitat in the 4-15 cm depth range. However, they do reasonably predict changes in the amount of habitat of less than 1 foot depth, some of which would be in the 4-15 cm range preferred by shorebirds. The area less than 1 foot deep provided an index of the possible dynamics of shallow water habitat and constituted the best available quantitative information.

The amount of shallow water habitat (< 1 foot deep) would increase under the Baseline from 1,143 acres at an elevation of -227 ft msl to about 3,600 acres at -235 ft msl. The Proposed Project would show a similar pattern. Although the perimeter of the Sea would decrease to 83 miles, the amount of shallow water habitat would increase to about 3,200 acres at -246 ft msl. The bathymetry analysis indicates that both the Baseline and Proposed Project would increase the amount of shallow water/mudflat habitat to a similar degree relative to existing conditions. There is no indication that there will be a net loss of shallow water/mudflat area under either the Baseline or Proposed Project conditions.

Existing shallow water/mudflat habitat could be lost or reduced in certain areas as the Sea recedes. These existing areas would be lost at the same rate under the Proposed Project and No Project alternative. Also, under both alternatives, new areas of shallow water/mudflat habitat would also be created at lower elevations. As the shallow impounded areas at the southern and southeast side of the Sea are lost due to elevation declines, new shallow impounded areas will likely be created either in the vicinity or in other areas of the Sea. Conversion of drains into gravity-flow systems will allow water from the drains to flow naturally to the Sea. The drains likely would create "mini-deltas" at each outlet as the water spreads out and meanders to the Sea. Foraging habitat for shorebirds could improve under this situation by (1) an increase in the amount of shallow water/mudflat habitat, and (2) creation and maintenance of lower salinity areas where a greater diversity of invertebrates can persist. As shorebirds are mobile and able to utilize different areas as habitat conditions become suitable, it is unlikely that negative impacts to shorebirds will occur as shallow water/mudflat areas shift locations.

In areas along the southern portion of the Sea, barnacle bars and other topographic variations back up drainwater and create small, shallow impoundments where shorebirds forage. To the degree that water from the Sea also contributes to determining the extent and depth of these impoundments (i.e., creates a backwater effect), the extent of inundation and characteristics of these areas could change as the Sea recedes. These potential changes would occur under both the Proposed Project and Baseline.

At the north end of the Sea, there could be a net reduction in the amount of shallow water/mudflat habitat. The topography of the seabed is much steeper than at the south end of the Sea. Thus, as the Sea recedes and the total length of shoreline becomes smaller, the amount of mudflat/shallow water habitat would decline. This effect would be greater under the Proposed Project than the Baseline. However, the Whitewater River could create a more extensive delta with greater amounts of shallow water/mudflat habitat as its discharge spreads out as the Sea pulls away from the river mouth. Increased flow from the CVWD Service Area could enhance this effect.

Under both the Proposed Project and Baseline, shallow water/mudflat habitat could be lost or reduced as the Sea recedes, but under both alternatives, new areas of shallow water/mudflat habitat also would be created as the Sea recedes. Because the magnitude and likelihood of changes in amount and characteristics of shallow water/mudflat habitat, either positively or negatively, does not differ between the Proposed Project and Baseline, the Proposed Project would not significantly affect the availability of this habitat type. All of these potential impacts to shallow water/mudflat habitat are described under Impact BR - 49. The analysis was based on the best available information on the bathymetry of the Sea and the potential changes in Sea elevation under the Proposed Project.

Response to Comment G25-46

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

to the Sea" (2-52). Given local opposition to "replacement water" fallowing,[75] the likelihood of legal challenge to such use of water from other water users (especially in light of Decision 1600 and the California Colorado River Water Use Plan), and the additional socio-economic and environmental justice impacts of such fallowing, such an approach seems unlikely to be implemented.

Yet these ill-defined, preliminary approaches are the basis for a finding of "No significant impacts (after mitigation) to biological resources" (Table ES-1). This specious assertion of complete mitigation, based upon a vague description of a proposed action, misleads the public and subverts the CEQA/NEPA process. Essentially, the reliance on this vague, yet-to-developed mitigation measure is illegal, as it defers meaningful evaluation of the proposed mitigation strategy prior to project approval.[76] The concept-level HCP approaches included in the DEIR fail to meet the standard of an informative and legally sufficient EIR. This inadequate approach prevents the public from providing informed feedback, and suggests the lead agencies intend to present an un-reviewed HCP, perhaps based on the concepts provided here and perhaps based on something completely different, in a final EIR as a *fait accompli*, precluding any meaningful public review or input.

G25-46

Recommendation – Provide a detailed HCP, with sufficient information to support the DEIR's finding that the HCP would provide full mitigation for all biological impacts at the Salton Sea.

VIII. Overreliance On HCP to Mitigation Project's Impacts on Salton Sea

G25-47

The DEIR/DEIS presents a Habitat Conservation Plan as an alternative to mitigate the proposed project's impacts on the Salton Sea, but the mitigation largely focuses on threatened, endangered and other covered species. All the other beneficial uses of the Sea are essentially ignored, including, but not limited to, boating, water sports, and the local economy. In general, this approach seems unbalanced, and biased against wholly restoring the Sea and all its beneficial uses.

A. HCP

G25-48

In reference to the potential effects of the proposed project on listed species, the DEIR/DEIS offers the disclaimer, "IID recognized and considered the following: … The level of mitigation should be scaled to the impact attributable to the water conservation and transfer programs."[77] This is a reasonable standard, assuming that the projected impacts are credibly and comprehensively assessed. The DEIR/DEIS fails to do this, partly by relying on the biased assumption that baseline conditions at the Salton Sea will represent a marked change from

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[75] The IID Board itself adopted a resolution opposing fallowing for the purpose of providing the water to help restore the Salton Sea, as have the City of Calexico, the City of El Centro, the City of Imperial, and Imperial Valley United, among others.

[76] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396.

[77] DEIR/DEIS, § 2.0, p. 2-49.

Response to Comment G25-47

The Habitat Conservation Plan only addresses threatened and endangered species because it was developed to meet the legal requirements for obtaining incidental take authorization for listed species and other special-status species under the federal and state Endangered Species Acts.

Response to Comment G25-48

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

current conditions, including a 7-foot drop in elevation.[78] Using IID's standard, the public could rightly assume that IID would also mitigate for the impacts the DEIR/DEIS attributes to reductions in flow to the Sea due to the 1988 IID/MWD Conservation Program, given that these impacts would represent a change from current conditions. The DEIR/DEIS fails to describe any existing or planned mitigation plans for the impacts attributable to the 1988 IID/MWD water conservation and transfer program, despite the projection that this program would decrease the elevation of the Sea by 7.3 feet, expose 16,000 acres of lakebed, and accelerate the rise in salinity to approximately 60,000 mg/L by 2023 and as high as 86,000 mg/L by 2077.[79]

G25-48

Recommendation – Describe IID's level of mitigation efforts (if any) for impacts attributable to implementation of the 1988 IID/MWD water conservation program.

G25-49

HCP Approach 1 fails to provide more than a cursory description of the Salton Sea portion of the HCP. Yet even this cursory description raises a host of questions and problems. The DEIR/DEIS notes that "the primary potential effects of the covered activities on proposed covered species associated with the Salton Sea relate to an increased rate of salinization and increased rate and magnitude of decline in the surface elevation," though these relative impacts are tied to the inaccurate baseline.[80] As described above, this arbitrary baseline minimizes the extent of impacts potentially caused by the proposed water conservation and transfer program, and therefore does not represent a reasonable threshold.

Regardless, the proposed "Hatchery and Habitat Replacement" approach for the Salton Sea portion of the HCP is fatally flawed, for the following reasons.

- The DEIR/DEIS notes that the habitat replacement ("fish ponds") component of the approach would be initiated "if a long-term Salton Sea Restoration Project were not implemented before the Sea could no longer support fish."[81] As noted above, unless the proposed project solely relies upon fallowing, it would effectively preclude the implementation of a Salton Sea Restoration Project because it would be cost-prohibitive to remove sufficient salt from the shrunken Sea to render the Sea habitable for fish.

- The trigger for the second component is ill-defined. As noted in Appendix C, tilapia are projected to reproduce within the delta regions long after the main body of the Sea becomes too saline for reproduction. Presumably, adult tilapia will continue to live in these less saline delta regions after the rest of the Sea becomes too saline for them. At what point, then, will the Sea "no longer support fish"? Is there a defined population that would trigger construction of the ponds? One would expected that the tilapia population would decline markedly, well before the adult salinity tolerance threshold is reached. Would impacts be mitigated in this transitional period?

[78] DEIR/DEIS, p. 3.1-120.

[79] DEIR/DEIS, p. 3.1-128.

[80] DEIR/DEIS, § 2.0, p. 2-49.

[81] *Id.* at p. 2-50.

Response to Comment G25-49

Approach 1 of the Salton Sea Conservation Strategy in the Draft HCP has been eliminated from consideration.