

STATE WATER RESOURCES CONTROL BOARD

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

WEDNESDAY, MAY 1, 2002
9:00 A.M.

CAL EPA BUILDING
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR 1564

CAPITOL REPORTERS (916) 923-5447

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
RICHARD KATZ

STAFF:

TOM PELTIER
ANDREW FECKO

COUNSEL:

DANA DIFFERDING

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REPRESENTATIVES

FOR IMPERIAL IRRIGATION DISTRICT:

ALLEN MATKINS LECK GAMBLE & MALLORY
501 West Broadway, 9th Floor
San Diego, California 92101-3577
BY: DAVID L. OSIAS, ESQ.
and
MARK HATTAM, ESQ.

FOR SAN DIEGO COUNTY WATER AUTHORITY:

HATCH AND PARENT
21 East Carillo Street
Santa Barbara, California 93102-0720
BY: SCOTT SLATER, ESQ.
and
STEPHANIE HASTINGS, ESQ.

FOR COACHELLA VALLEY WATER DISTRICT:

BOLD, POLISNER, MADDOW, NELSON & JUDSON
500 Ygnacio Valley Road, Suite 325
Walnut Creek, California 94596
BY: ROBERT MADDOW, ESQ. - SPECIAL COUNSEL

REDWINE AND SHERRILL
1950 Market Street
Riverside, California 92501
BY: GERALD SHOAF, ESQ.
and
STEVEN B. ABBOTT, ESQ.

FOR METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA:

ELLISON, SCHNEIDER & HARRIS
2015 H Street
Sacramento, California 95814-3109
BY: ANNE SCHNEIDER, ESQ.
and
ROBERT E. DONLAN, ESQ.

FOR WILLIAM DU BOIS:

WILLIAM DU BOIS
3939 Walnut Avenue, #144
Carmichael, California 95608

1 REPRESENTATIVES (CONT.)

2 FOR CALIFORNIA FARM BUREAU FEDERATION:

3 HENRY E. RODEGERDTS, ESQ.
4 2300 River Plaza Drive
5 Sacramento, California 95833

6 FOR LARRY GILBERT:

7 LARRY GILBERT
8 945 East Worthington Road
9 Imperial, California 92251

10 FOR COUNTY OF IMPERIAL:

11 ANTONIO ROSSMANN, ESQ.
12 380 Hayes Street
13 San Francisco, California 94102

14 FOR DEFENDERS OF WILDLIFE:

15 BRENDAN FLETCHER
16 926 J Street, Suite 522
17 Sacramento, California 95814
18 and
19 KIMBERLEY W. DELFINO

20 FOR COLORADO RIVER INDIAN TRIBES:

21 OFFICE OF THE ATTORNEY GENERAL
22 ROUTE 1, Box 23-B
23 Parker, Arizona 85344
24 BY: ERIC SHEPARD, ESQ.
25 and
LOLA RAINEY, ESQ.

FOR SALTON SEA AUTHORITY:

TOM KIRK
78-401 Highway 111, Suite T
La Quinta, California 92253

FOR NATIONAL WILDLIFE FEDERATION:

KEVIN DOYLE
3500 Fifth Avenue, Suite 101
San Diego, California 92103

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REPRESENTATIVES (CONT.)

FOR NATIONAL AUDUBON SOCIETY - CALIFORNIA:

LAW OFFICES OF WILLIAM YATES
8002 California Avenue
Fair Oaks, California 95628
BY: WILLIAM YATES, ESQ.
and
KEITH G. WAGNER, ESQ.

FOR PLANNING AND CONSERVATION LEAGUE:

KAREN DOUGLAS
926 J Street, Suite 612
Sacramento, California 95814

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SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 1, 2002, 9:00 A.M.

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CHAIRMAN BAGGETT: Where we ended yesterday I will ask a few questions myself and staff and redirect, I assume.

MR. OSIAS: I'd just as soon finish with these witnesses.

CHAIRMAN BAGGETT: That is fine.

MR. OSIAS: Dr. Smith should be here any minute.

MR. SLATER: Perhaps he's with Mr. Levy.

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CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

BY THE BOARD

CHAIRMAN BAGGETT: My questions, I think were basically -- a lot of questions were asked yesterday that I was interested in. I guess I want to reinforce a couple of comments.

Reading EPA's draft, their comments on the EIS, one of the comments summarizes a number of issues I was concerned about. Their comment was that the EIS also does not provide sufficient discussion of potential impacts of increased water temperature or increased concentrations of perchlorate boron, pesticides, nutrients, sediments, metals and total dissolved solids in a reduced volume of surface water.

1 Do you intend to address all those areas in your Final
2 EIR, all those concerns and those particular constituents?

3 DR. ECKHART: As I understand, we will try to address
4 all of those concerns. I am not familiar with if there is
5 one of those that we've already got a solution to, and that
6 would be the temperature one. But the rest, my
7 understanding we will address all of those.

8 CHAIRMAN BAGGETT: In terms of air quality issue, there
9 was some discussion yesterday regarding the potential of the
10 dried up lake bed, if you will. A crust would form, that
11 crust would mitigate or cause for less PM-10 and other
12 emissions in the environment.

13 I guess without elaborating at length now, do you
14 intend to do additional analysis or go to other reports?

15 MS. HARNISH: I thought we exhausted the existing
16 reports in terms of evaluating what's available. What we
17 are looking at is proposing an ongoing, possibly an ongoing
18 research and monitoring program as the Sea recedes and then
19 mitigation will flow out of that.

20 But there isn't time, even if we had a year, I don't
21 think there is time to really nail down what the emissions
22 would be. That is what they tell me. That is what our air
23 people have concluded, and many of them have been working on
24 Owens. So in the state they have spent millions and
25 millions of dollars and they still don't have a handle what

1 the emission rates are. We're evaluating what's been done
2 there and trying to apply something that is reasonable and
3 feasible as mitigation, but we haven't made any final
4 decisions.

5 CHAIRMAN BAGGETT: One other question. Again, I have
6 tried to recall here, there was some discussion yesterday
7 regarding selenium and potential buildup of selenium, if you
8 will, in pond scenarios to mitigate for the issues.

9 Has any analysis been done regarding the relationship
10 of the Toxic Pits Act to the selenium ponding or buildup of
11 selenium?

12 DR. ECKHART: Not to my knowledge. I am not familiar
13 with that. We have certainly done the analysis of the
14 selenium buildup in the ponds, but in reference to that --

15 CHAIRMAN BAGGETT: To the Toxic Pits Act?

16 DR. ECKHART: Yes. I am not familiar with that.

17 CHAIRMAN BAGGETT: Andy.

18 ---oOo---

19 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

20 BY STAFF

21 MR. FECKO: There has been some discussion of water use
22 in the IID. I guess my question would be in a number of
23 places there is up to seven significant figures shown for
24 diversion rates per year. I am wondering -- I know those
25 probably come out of averages and it is just a fate of the

1 math, how accurately does IID or by extension the feds
2 measure diversions at Imperial Dam?

3 DR. ECKHART: The accuracy -- and you're absolutely
4 correct on the reporting of the numbers. Once you go
5 through the calculations we are probably carrying too many
6 significant figures. As I understand, the accuracy of the
7 measurements are based on the accuracy of the measurement
8 device, and the measurement device is rated by USGS and
9 IID. So they periodically go through and check to see what
10 the accuracy of that device is. As I recall, this is just
11 from memory, the USGS has rated those measurement devices
12 within a 3 to 5 percent accuracy range.

13 MR. FECKO: We also discussed yesterday a number of
14 different on-farm conservation measures. I think there was
15 a discussion of water quantity discussed, depending on which
16 on-farm conservation measure you used, and we decided, or
17 you had said that it really didn't make a difference.

18 I guess my question is water quality in the drains.
19 Does the kind of on-farm conservation you choose have an
20 affect on water quality in the drains?

21 DR. ECKHART: If you are using on-farm conservation
22 that is focused on tailwater, the surface runoff,
23 essentially, I mean, obviously, there could be minor
24 discrepancies, but essentially the water quality in the
25 drains is based on the subsurface flow and the surface flow

1 to the drain.

2 So any conservation measure that would reduce the
3 tailwater quantity is also reducing those constituents and,
4 therefore, the effect to the drain is essentially the same
5 even from a water quality standpoint, and that is for those
6 methods that conserve tailwater which is the focus of
7 efficiency conservation.

8 MR. FECKO: Maybe for Ms. Harnish, either one.

9 We had heard discussion on focusing mitigation measures
10 on special status or endangered species. How did you treat
11 fully protected species in the context of the EIR? Were
12 they treated as no take being allowed for those species, or
13 were they treated as endangered species in anticipation of
14 getting a take permit for them?

15 DR. ECKHART: It is my understanding the latter is
16 correct, that we would assume that we would need a take
17 permit or possibly other remedies for the fully protected
18 species.

19 MR. FECKO: Thank you.

20 CHAIRMAN BAGGETT: Tom.

21 MR. PELTIER: Dr. Eckhart, I have a couple questions.

22 On Page 36 of your testimony there is a reference here
23 to the IID intends to require confirmation by state and
24 federal authorities of such water use constitutes a
25 reasonable and beneficial use. That is in relation to the

1 proposed ponds, I believe.

2 I'm just wondering yesterday you were testifying that
3 you intended to use water from the New River for those
4 ponds; is that correct?

5 DR. ECKHART: Under -- that is correct. Under current
6 consultation we are looking at the possibility of using New
7 River water of those ponds' mitigation.

8 MR. PELTIER: This doesn't apply anymore as far as
9 requiring confirmation?

10 DR. ECKHART: We are not quite complete with those
11 consultations at this point, Mr. Peltier. At this point my
12 report is that we are moving towards the New River
13 solution. So if that is the case, then, you are correct, we
14 would not need to do this.

15 MR. PELTIER: Thank you.

16 I have another question. Are you familiar with the
17 Lower Colorado River Multi-Species Conservation Program?

18 DR. ECKHART: I know of it.

19 MR. PELTIER: Do you know are there projects that have
20 been identified, like restoration projects, identified there
21 that require additional water?

22 DR. ECKHART: It is my understanding that there are
23 biological mitigation projects. And it would be my
24 understanding that there are plant species involved, which
25 could potentially require Colorado River water for that

1 mitigation, and that is my understanding.

2 MR. PELTIER: Do you know anything about the type of
3 habitat that would be generated in those projects?

4 DR. ECKHART: I'm not fully familiar with those. It
5 would be the riverine type of habitats.

6 MR. PELTIER: You don't know whether that would provide
7 habitat for some of the birds that would be losing habitat
8 at the Salton Sea with the decline?

9 DR. ECKHART: I don't think we have necessarily studied
10 that or relied upon that at this point. I think that is
11 certainly a possibility, but I don't think we have really
12 focused on that and utilized that as part of our
13 mitigation.

14 MR. PELTIER: I just have a couple other questions on
15 the baseline that was discussed yesterday. There were
16 discussions about the effect of using a baseline that was a
17 hundred thousand acre-feet lower or higher than what the
18 averages have been.

19 Do you know what the quantity of inflow on the New
20 River from Mexico is, just generally?

21 DR. ECKHART: Currently, as I recall, you're asking me
22 to search pretty deep. I know it is in the document.

23 MR. PELTIER: I don't need an exact figure, ballpark
24 would be fine.

25 DR. ECKHART: As I recall, it's 400,000. One moment.

1 Yeah, it looks like it's a little over 400,000 at this
2 point.

3 MR. PELTIER: Is there any reason to expect that those
4 flows will be maintained, or do you expect those flows will
5 change in the future?

6 DR. ECKHART: We do expect that those flows could
7 change in the future under the baseline condition, yes.

8 MR. PELTIER: What effect would those kinds of changes
9 have on the baseline relative to the time during which the
10 Sea would still be sustainable?

11 DR. ECKHART: From the analysis that our team has
12 performed on the New River and, of course, we have seen all
13 types of proposals, and we realize there are two areas that
14 certainly will affect the New River. One of which is a
15 water quality issue where there is a proposed treatment
16 plant for Mexicali. So that is one area; that would be the
17 water quality area.

18 The water quantity area that we are aware of is that
19 potentially there is a powerplant that is to be built in
20 Mexico that would utilize some of that New River water. And
21 so that water, whatever that powerplant uses, and as I
22 recall it takes out 10,000 and puts back 3,000, so the net
23 effect to the river would be around 7,000. Trying to recall
24 those numbers from memory. We know that the New River in
25 the future potential could be reduced by that amount.

1 We did not include that in the baseline. Those were
2 cumulative effects that we have seen.

3 MR. PELTIER: That covers my questions.

4 Thank you.

5 MR. FECKO: I have one more, perhaps two.

6 I think, if I recall correctly, there was some
7 discussion of IID having to increase diversions because the
8 incoming water quality, TDS, would fill up.

9 What is the cause of that? Is that being built into
10 your modeling that Colorado River water is going to get
11 saltier, in fact, at Imperial Dam?

12 DR. ECKHART: Yes. There was two questions there. It
13 is, first of all, built into the model of the valley that we
14 used. So we do -- we can analyze any type of different
15 salinity within that model. The cause, as I understand, is
16 something that has been projected by the Bureau of
17 Reclamation. The Bureau of Reclamation on their studies on
18 the river and environmental study they completed shows that
19 they believe within the next few years the river could reach
20 the 879 milligrams per liter at Imperial Dam.

21 Of course, the causes of that are everything upstream,
22 necessarily. So we took the position that that is going to
23 happen because the Bureau's projected it, and we did include
24 it in the baseline.

25 MR. FECKO: By extension, then, the drain water in IID

1 is also going to get saltier?

2 DR. ECKHART: That is correct.

3 MR. FECKO: That is also built into the model for
4 Salton Sea, let's say, the effects on the Salton Sea?

5 DR. ECKHART: Yes. That model is tied to the Salton
6 Sea model. So as salinity increases, obviously, leaching
7 increases and the salt load to the Sea and water load to the
8 Sea and the water quality changes, and that is pumped into
9 the Salton Sea model, and, of course, it uses those
10 numbers.

11 MR. FECKO: Thanks.

12 CHAIRMAN BAGGETT: Any other questions from that?

13 If not, redirect.

14 MR. OSIAS: Thank you.

15 ---oOo---

16 REDIRECT EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

17 BY MR. OSIAS

18 MR. OSIAS: Let me just do a quick follow-up on some of
19 the questions posed by Director Baggett and staff.

20 Dr. Eckhart, do you know the frequency of the
21 measurement at Imperial Dam for diversions? I don't think
22 that question was answered.

23 UNIDENTIFIED SPEAKER: Turn your mike on.

24 MR. OSIAS: I'm sorry.

25 Would you like me to repeat the question?

1 DR. ECKHART: No. Essentially, the measurements are
2 made daily.

3 UNIDENTIFIED SPEAKER: What was the question and
4 answer?

5 MR. OSIAS: What is the frequency of measurement of
6 diversion at Imperial Dam and the answer was he believes
7 daily.

8 Dr. Eckhart, you answered a question or so about the
9 Lower Colorado River MSCP, that is the Multiple Species
10 Conservation Program?

11 DR. ECKHART: Plan.

12 MR. OSIAS: That's a cooperative effort involving a lot
13 of parties; is that right?

14 DR. ECKHART: As I understand, yes.

15 MR. OSIAS: Do you know who they are?

16 DR. ECKHART: Actually, multi-state and multi-water
17 agencies within the state and actually other agencies.

18 MR. OSIAS: Representative of the federal government as
19 well?

20 DR. ECKHART: Correct.

21 MR. OSIAS: Was it initiated before this project that
22 your joint EIR/EIS addresses?

23 DR. ECKHART: Yes.

24 MR. OSIAS: It is ongoing?

25 DR. ECKHART: It is ongoing.

1 MR. OSIAS: Perhaps there is a connection, maybe not,
2 you tell me, between that discussion and one of the
3 cross-examination questions yesterday which was why doesn't
4 the HCP cover the Colorado River. Do either of you know the
5 answer to that question?

6 DR. ECKHART: My understanding is that at the time we
7 proposed to do the HCP for our project, we realized that the
8 MSCP was in process, and so Imperial Irrigation District and
9 the other water agencies involved in this transfer decided
10 that they would use the MSCP to cover the river as opposed
11 to HCP for this particular project.

12 MR. OSIAS: Would the MSCP produce ultimately a Habitat
13 Conservation Plan?

14 DR. ECKHART: Yes.

15 MR. OSIAS: The fact that your EIR/EIS does not have a
16 HCP for the Lower Colorado River, does that mean there will
17 be no mitigation for the Lower Colorado River?

18 DR. ECKHART: That does not mean there will be no
19 mitigation.

20 MR. OSIAS: Many questioners yesterday sort of
21 suggested the following equation. If you reduce diversions
22 to the Sea, you increase salinity to the Sea.

23 You remember that line of questioning from all of your
24 friends out here?

25 DR. ECKHART: Yes, I do.

1 MR. OSIAS: Isn't it true that if you reduce diversions
2 to the Sea you also reduce the mass or quantity of salt
3 entering the Sea?

4 DR. ECKHART: That's correct.

5 MR. OSIAS: Do you know how much salt enters the Sea
6 per acre-foot?

7 DR. ECKHART: Currently the salt load from the Colorado
8 River is approximately one ton per acre-foot. As we
9 projected, that is going to move to 1.2 tons per acre-feet.
10 As, if you would reduce the flow with the Colorado River by
11 one acre-feet, then the salt tonnage to the Sea would be
12 reduced by one ton.

13 MR. OSIAS: Do you remember being, I don't know whether
14 the right word is questioned, being questioned about the
15 facts that your projections started in the year 2000?

16 DR. ECKHART: I do.

17 MR. OSIAS: That was in your Salton Sea impact
18 projection, I guess; is that right?

19 DR. ECKHART: Salton Sea County Model, correct.

20 MR. OSIAS: You explained that is because your work was
21 done prior to that time?

22 DR. ECKHART: That's correct.

23 MR. OSIAS: Now, did that model predict the elevation
24 for the year 2002?

25 DR. ECKHART: Yes, it did.

1 MR. OSIAS: That was just a prediction?

2 DR. ECKHART: That's correct.

3 MR. OSIAS: How close was that prediction to what turns
4 out to be the elevation at 2002?

5 DR. ECKHART: To the nearest foot, it was precise.

6 MR. OSIAS: Could we put up Page 1-26 of the EIR/EIS?
7 I guess to the both of you. You are familiar with this
8 diagram being in your joint EIR/EIS?

9 MS. HARNISH: Yes.

10 MR. OSIAS: I think the both of you were asked
11 questions sort of suggesting that the EIR/EIS did not
12 evaluate secretarial action in compliance with the existing
13 priority system.

14 Do you remember those questions?

15 MS. HARNISH: Yes.

16 MR. OSIAS: Does the EIR/EIS evaluate secretarial
17 compliance with the priority system?

18 MS. HARNISH: No.

19 MR. OSIAS: Why not?

20 MS. HARNISH: Our understanding is that is not a
21 discretionary action, and it predates this project and is
22 out of the scope of this project. We included it in the
23 baseline, however.

24 MR. OSIAS: Do you see the subtotal of 4.4?

25 MS. HARNISH: Yes.

1 MR. OSIAS: Dr. Eckhart, that is in the 385 above it.

2 Do you see that?

3 DR. ECKHART: Yes, I do.

4 MR. OSIAS: These are factors that you put into the
5 Salton Sea and drain baseline projections? Those were used?

6 DR. ECKHART: That's right.

7 MR. OSIAS: If you go back actually -- do you know
8 where the -- what the relevance of 4.4 is to California?

9 DR. ECKHART: The -- could you rephrase that question?

10 MR. OSIAS: Yes.

11 How does 4.4 relate to California's state right to the
12 Colorado River?

13 DR. ECKHART: That is its entitlement to the Colorado
14 River.

15 MR. OSIAS: In a normal year?

16 DR. ECKHART: In a normal year.

17 MR. OSIAS: In a surplus year how much does it get?

18 DR. ECKHART: In a surplus year the surplus would be
19 declared by the Secretary, and that surplus would be divided
20 between Arizona and California, and that surplus would be
21 allocated according to the Seven Party Agreement.

22 MR. OSIAS: Does California have the right to take more
23 than 4.4 when there is not a surplus?

24 DR. ECKHART: No.

25 MR. OSIAS: How about if another entitlement holder

1 doesn't take its full entitlement?

2 DR. ECKHART: Then another entitlement holder can use
3 that water.

4 MR. OSIAS: If Arizona doesn't take its full 2.8,
5 California can use more than 4.4?

6 DR. ECKHART: That's correct.

7 MR. OSIAS: Did that use to happen?

8 DR. ECKHART: Yes, it did.

9 MR. OSIAS: Regularly?

10 DR. ECKHART: Regularly.

11 MR. OSIAS: When did that stop? When I say when did
12 that stop, when did Arizona stop leaving water in the river?

13 DR. ECKHART: Just recently. I don't know what year,
14 but it was recently.

15 MR. OSIAS: Last couple years?

16 DR. ECKHART: Last couple years.

17 MR. OSIAS: Did your model assume that Arizona
18 continues to take its full entitlement?

19 DR. ECKHART: Yes, it does.

20 MR. OSIAS: And Nevada as well?

21 DR. ECKHART: Yes, it does.

22 MR. OSIAS: That is based on present history, correct?

23 DR. ECKHART: Yes.

24 MR. OSIAS: If we go back 50 years?

25 DR. ECKHART: That is not the case.

1 MR. OSIAS: Someone asked you, Dr. Eckhart, whether you
2 had considered the conversion of farmland into city land.
3 You remember that?

4 DR. ECKHART: I do remember that.

5 MR. OSIAS: I think that question was asked in the
6 context of doesn't that essentially follow the farmland.
7 There was questions around it relating to fallowing.

8 Do you recall that?

9 DR. ECKHART: Yes, I do.

10 MR. OSIAS: If you convert farmland into city land in
11 the Imperial Valley, does it result in any reduction in
12 water use?

13 DR. ECKHART: Not necessarily.

14 MR. OSIAS: Does it result in a reduction in farming
15 activity?

16 DR. ECKHART: Not necessarily.

17 MR. OSIAS: Could you explain those answers?

18 DR. ECKHART: Related to water use. First of all, as
19 the city moves on to municipal ground, the city will be
20 using water and they will be having return flows. In fact,
21 it could be higher return flows with municipal use.

22 In addition, all of the ag land within the Imperial
23 Valley that is entitled to receive water is not farmed
24 currently. So, essentially, a farmer who would lose his
25 land to municipal growth could go out, essentially, to other

1 land and start farming that land. So, in fact, there would
2 be no loss of agricultural land in that case.

3 MR. OSIAS: Let me ask this to you, Ms. Harnish.

4 You are -- at least for six months your title on this
5 project has been what?

6 MS. HARNISH: Program manager, functionally.

7 MR. OSIAS: I think yesterday you and Dr. Eckhart were
8 asked questions about pile worms algae, invertebrates, air
9 quality, chemicals and environmental justice, cultural
10 resources, recreation, aesthetics, odor and probably some
11 I'm not remembering.

12 Within CH2MHill did you have specialists look at each
13 of those?

14 MS. HARNISH: Yes.

15 MR. OSIAS: How many witnesses would we have needed to
16 bring for the person most knowledgeable to have been here to
17 answer those questions?

18 MS. HARNISH: Probably 25 to 40.

19 MR. OSIAS: The fact that you answered you don't know,
20 doesn't mean that CH2MHill doesn't know; is that right?

21 MS. HARNISH: That's right.

22 MR. OSIAS: Same answer for Dr. Eckhart, right?

23 DR. ECKHART: That's correct.

24 MR. OSIAS: That is all I have.

25 Thank you.

1 CHAIRMAN BAGGETT: On redirect that recross is limited
2 to those answers we just heard.

3 Mr. Gilbert.

4 MR. GILBERT: Waive.

5 CHAIRMAN BAGGETT: Mr. Du Bois.

6 ---oOo---

7 RECCROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

8 BY MR. DU BOIS

9 MR. DU BOIS: I think I have one question to ask. That
10 is in regard to this matter of a city expanding onto present
11 farmland. I believe you testified that that would not
12 necessarily decrease the farming because the farmer could
13 move to other land that is currently not produced, but it is
14 within the Irrigation District?

15 DR. ECKHART: That's correct.

16 MR. DU BOIS: The newly occupied city over the former
17 farmland would use water, would it not?

18 DR. ECKHART: That's correct.

19 MR. DU BOIS: And would the farmer then be entitled to
20 take his water allotment off of the part that the city
21 occupied and move it to another location on land that isn't
22 farmed?

23 MR. OSIAS: Mr. Director, I'd object. Assumes that
24 there is water allotment per land, and there is no evidence
25 of the fact that is a water allotment.

1 MR. DU BOIS: I accept that.

2 CHAIRMAN BAGGETT: Rephrase it.

3 MR. DU BOIS: Yes.

4 The result of that action of the city growth would
5 increase the water consumption of the Imperial District,
6 would it not?

7 DR. ECKHART: That is correct.

8 MR. DU BOIS: Thank you.

9 i have no other questions.

10 CHAIRMAN BAGGETT: Thank you.

11 Mr. Rodegerdts.

12 MR. RODEGERDTS: Waive.

13 CHAIRMAN BAGGETT: Defenders of Wildlife.

14 MR. ROSSMANN: I should go if you want to take it in
15 order. We are in this all today.

16 CHAIRMAN BAGGETT: We will switch. I was creating a
17 new standard. I recreated it, but I just forget the
18 county.

19 Mr. Rossmann.

20 ---oOo---

21 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

22 BY COUNTY OF IMPERIAL

23 BY MR. ROSSMANN

24 MR. ROSSMANN: We don't need the table up again, but,
25 Dr. Eckhart, you just said that the baseline includes the

1 fact that the Secretary has no discretion to enforce the
2 priorities on the Colorado River; is that correct?

3 DR. ECKHART: That's correct.

4 MR. ROSSMANN: So the baseline then includes in a
5 no-project scenario the State of California losing anywhere
6 from 6- to 800,000 acre-feet from its resent historical
7 extractions from the Colorado River?

8 DR. ECKHART: That is possible in a normal year.

9 MR. ROSSMANN: The baseline does not include other
10 countermeasures that agencies might take in the future to
11 deal with that?

12 DR. ECKHART: That's correct. That's not part of this
13 project.

14 MR. ROSSMANN: On baseline and no-project you testified
15 that in someplaces you used existing conditions and other
16 places you created a baseline dependent on the resource?

17 DR. ECKHART: That's correct.

18 MR. ROSS: Is it possible for the Final EIR to actually
19 include for each resource an assessment of both, that
20 comparison to existing conditions and comparison to the
21 baseline that you have established in the document?

22 DR. ECKHART: That is certainly possible.

23 MS. HARNISH: We are not intending to do that. Is that
24 in your written comments?

25 MR. ROSSMANN: Just in my question.

1 MS. HARNISH: We would have to asses whether or not
2 that is an appropriate analysis.

3 MR. ROSSMANN: Are you familiar with this Board's
4 Decision 1641 concerning Mono Lake? Are either of you
5 familiar with that?

6 MS. HARNISH: I'm not.

7 DR. ECKHART: No.

8 MR. ROSSMANN: You are not aware of the fact this
9 Board, in fact, for air quality purposes looked at both a
10 1941 preproject baseline and a 1994 existing condition
11 baseline?

12 MS. HARNISH: I'm not aware of that, no.

13 MR. ROSSMANN: Thank you very much.

14 CHAIRMAN BAGGETT: Thank you.

15 Now Mr. Fletcher.

16 ----oOo----

17 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

18 BY DEFENDERS OF WILDLIFE

19 BY MR. FLETCHER AND MS. DELFINO

20 MR. FLETCHER: Good morning again, Dr. Eckhart. You
21 just testified to the fact that if you reduce inflows to the
22 Sea, if inflows are reduced to Sea, then salt inputs to the
23 Sea would be reduced as well; is that right?

24 DR. ECKHART: That's correct.

25 MR. FLETCHER: Now the water that flows into the Sea is

1 less salty than the water in the Sea?

2 DR. ECKHART: Yes.

3 MR. FLETCHER: Considerably less salty?

4 DR. ECKHART: It's less salty.

5 MR. FLETCHER: So the net effect of reducing inflows to
6 the Sea is to increase the Sea salinity; is that correct?

7 DR. ECKHART: The salinity concentrations in the Sea,
8 yes.

9 MR. FLETCHER: You mentioned two figures regarding salt
10 inputs to the Sea of range of one to 1.2 tons per acre foot;
11 is that correct?

12 DR. ECKHART: That's correct. That was at the Colorado
13 River.

14 MR. FLETCHER: Is the higher figure there, does that
15 take account of the projected increase in salinity as
16 projected by the Bureau of Reclamation?

17 DR. ECKHART: That's correct.

18 MR. FLETCHER: Did you take account in your analysis of
19 planned projects that Reclamation may either undertake or
20 coordinate to reduce salinity in the Sea?

21 DR. ECKHART: The numbers that we used that represent
22 the 879 and roughly converted to tons, 1.2 tons of salt per
23 acre does assume that. In other words, there will be
24 salinity control projects that are implemented on the
25 Colorado River that would hold the salinity to 879.

1 MR. FLETCHER: No more questions.
2 Thank you.
3 CHAIRMAN BAGGETT: Thank you.
4 National Wildlife.
5 I'm sorry, Ms. Delfino.
6 MS. DELFINO: Good morning. Just a quick question
7 going back to the Lower Colorado River and MSCP that you
8 were asked about earlier.
9 Are you relying upon mitigation in that MSCP as part of
10 your environmental document?
11 DR. ECKHART: For the Lower Colorado River, yes.
12 MS. DELFINO: Is the MSCP completed?
13 DR. ECKHART: It is not.
14 MS. DELFINO: Do you know when it will be completed?
15 DR. ECKHART: I do not.
16 MS. DELFINO: When are you planning on certifying your
17 EIR?
18 DR. ECKHART: We hope to certify it by the end of next
19 month.
20 MS. DELFINO: Do you think your EIR -- do you think the
21 MSCP will be completed by the time you certify your EIR?
22 DR. ECKHART: It will not. But, of course, there is
23 another process, a Section 7 process that is involved down
24 in the Lower Colorado River.
25 MS. DELFINO: So if it is not completed, how can you

1 rely upon the mitigation that is being worked through on the
2 Lower Colorado River MSCP?

3 DR. ECKHART: We're relying on the biological opinion
4 and the Section 7 consultation and the mitigations as a
5 result of that.

6 MS. DELFINO: Are you talking about the 2001 biological
7 opinion that was issued?

8 DR. ECKHART: Correct.

9 MS. DELFINO: Did that 2001 biological opinion, does
10 that cover biological impacts from the IOP?

11 DR. ECKHART: I believe it does.

12 MS. DELFINO: Are you sure?

13 DR. ECKHART: Because of the range of reductions and
14 increases in flows, it would be my understanding that -- it
15 would be just my understanding that it covers that.

16 MS. DELFINO: So you would be surprised if I said that
17 the IOP has not undergone any endangered species compliance
18 at this point?

19 DR. ECKHART: Yes, I would.

20 MS. DELFINO: Thank you.

21 CHAIRMAN BAGGETT: National Wildlife. Mr. Doyle.
22 Audubon.

23 MR. YATES: Thank you Mr. Chairman.

24 ---oOo---

25 //

1 RE CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

2 BY NATIONAL AUDUBON CALIFORNIA

3 BY MR. YATES

4 MR. YATES: I just have one question that goes to who
5 is sitting at the table.

6 The purpose of this hearing was to address impacts of
7 the project on fish and wildlife resources. So the question
8 is whenever questions were asked regarding impacts of this
9 project on fish and wildlife resources, we were unable to
10 get a response because one of those 25 or 40 people you said
11 were unavailable.

12 Wouldn't it have been more reasonable to have the
13 individuals who worked on that appear at this hearing?

14 MR. OSIAS: Objection as to whether these witnesses
15 know what is reasonable for appearing at a hearing.

16 CHAIRMAN BAGGETT: You phrased a question in there. I
17 understand the --

18 MR. YATES: Is the purpose of this hearing to address
19 the impacts of the project on fish and wildlife resources?

20 DR. ECKHART: The purpose of this project?

21 MR. YATES: This hearing.

22 DR. ECKHART: That would be my understanding.

23 MR. YATES: Did either of you work on the biological
24 section of the Draft EIR/EIS?

25 DR. ECKHART: Which section?

1 MR. YATES: Biological resources.

2 DR. ECKHART: Section 3.2?

3 MR. YATES: Yes.

4 DR. ECKHART: I did not.

5 MS. HARNISH: I did not.

6 MR. YATES: Thank you.

7 CHAIRMAN BAGGETT: Thank you.

8 Ms. Douglas.

9 MS. DOUGLAS: I have no questions.

10 CHAIRMAN BAGGETT: Sierra Club is still not here.

11 Salton Sea, Mr. Kirk.

12 ----oOo----

13 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

14 BY SALTON SEA AUTHORITY

15 BY MR. KIRK

16 MR. KIRK: Two follow-ups. One, Mr. Peltier was asking
17 essentially about habitat replacement, maybe at the
18 Colorado River. Is it true, John, in your long and
19 enjoyable negotiations with the Fish and Wildlife Service
20 that you considered all sorts of approaches towards
21 addressing the temporal impact issue on fish eating birds?

22 DR. ECKHART: Yes.

23 MR. KIRK: In fact, you did consider off-site
24 mitigation, looking at areas outside of the Imperial Valley,
25 did you not?

1 DR. ECKHART: That's correct.

2 MR. KIRK: Looked at Colorado River, both in the U.S.
3 and Mexico, presumably?

4 DR. ECKHART: We looked at the Colorado River. I don't
5 know if we focused anything on Mexico.

6 MR. KIRK: You have settled in on the HCP. HCP number
7 one settles in on habitat replacement near the Salton Sea;
8 is that true?

9 DR. ECKHART: That's correct.

10 MR. KIRK: Is it true that one of the challenges with
11 those other approaches, the Colorado River, as an example,
12 is the sheer number and diversity of species at the Salton
13 Sea?

14 DR. ECKHART: That's certainly one of the challenges.

15 MR. KIRK: Is another challenge with that sheer number
16 and diversity of species the amount of food resources that
17 one would have to provide to sustain those populations for
18 some period of time?

19 DR. ECKHART: Yes.

20 MR. KIRK: Is it true that a pelican eats several fish
21 every day?

22 DR. ECKHART: That's correct.

23 MR. KIRK: Is it true that there are 30,000 pelicans at
24 the Salton Sea in any one day?

25 DR. ECKHART: I am not familiar with that number, but

1 it certainly does vary.

2 MR. KIRK: If we did the math that would end up into
3 the millions of pounds of fish that one has to provide,
4 correct?

5 DR. ECKHART: That's correct.

6 MR. KIRK: In your assessment and your work with the
7 Fish and Wildlife Service was it determined that, in fact,
8 you couldn't provide that kind of resource off-site?

9 DR. ECKHART: That's correct.

10 MR. KIRK: Is it true that it would be difficult to
11 divert the birds, put a sign up, et cetera, to someplace a
12 hundred miles off or 200 miles off?

13 DR. ECKHART: I can't address that. It would be my
14 opinion. I am not a biologist.

15 MR. KIRK: This was, again, a long and arduous process
16 of the HCP and it continues on, as when heard yesterday; is
17 that correct?

18 DR. ECKHART: That's correct.

19 MR. KIRK: Is it true that when you looked at habitat
20 replacement approximately a year ago, you made presentations
21 in this city that suggested that habitat replacement would
22 cost several billion dollars?

23 DR. ECKHART: At the -- that is true based on the
24 mitigation that we were proposing at that time, yes.

25 MR. KIRK: Today, ballpark, I understand these are

1 sensitive negotiations, but ballpark, the estimate between a
2 hundred and \$200,000,000 today?

3 DR. ECKHART: That's correct.

4 MR. KIRK: The habitat replacement a year ago was
5 several billion dollars and today it is between a hundred
6 and \$200,000,000, a bargain apparently. What's changed
7 between yesterday and today?

8 DR. ECKHART: Just the whole concept of the habitat and
9 hatchery proposal.

10 MR. KIRK: How has it changed to save several billion
11 dollars?

12 MR. OSIAS: Mr. Chairman, I recall nothing on redirect
13 on the subject of costs. Mr. Kirk is taking great leeway in
14 this.

15 MR. KIRK: Mr. Chairman, Mr. Peltier raised the issue
16 of habitat replacement.

17 CHAIRMAN BAGGETT: That is not -- you can only respond
18 to questions raised by Mr. Osias.

19 MR. KIRK: Oh, I didn't know. I assumed --

20 CHAIRMAN BAGGETT: No.

21 MR. KIRK: My apologies. I thought that anything that
22 was --

23 CHAIRMAN BAGGETT: Only the narrow areas that Mr. Osias
24 did on redirect can you comment on, which is --

25 MR. KIRK: I understand. I do have a question related

1 to one of those narrow areas.

2 CHAIRMAN BAGGETT: Thank you.

3 MR. KIRK: The elevation, the elevation. You just
4 testified that, in fact -- in fact, one of the issues to
5 remind you that I raised yesterday was that started this
6 projection in the year 2000. You explained why you did
7 that. Upon your testimony a few minutes ago you indicated
8 that, lo and behold, the model projected accurately within
9 one foot what the elevation is today.

10 What is the elevation of the Salton Sea today?

11 DR. ECKHART: I don't know what it is today.

12 MR. KIRK: You just testified that your projection was
13 within one foot. Do you know what the elevation is today?

14 DR. ECKHART: The projection for 2002 was within one
15 foot.

16 MR. KIRK: What year is it, John?

17 DR. ECKHART: 2002.

18 MR. KIRK: Do you know what the elevation of the Sea is
19 the year 2002?

20 DR. ECKHART: In January it was minus 228. I don't
21 know what it is today.

22 MR. KIRK: Fair enough. I wasn't asking you, I should
23 have clarified, John.

24 The elevation in the year 2002 is minus 228. And we
25 understand there is some seasonal variations. What was it

1 in 2001?

2 DR. ECKHART: I don't know that.

3 MR. KIRK: Could you refer to Figure 7.1 in Appendix F
4 of the transfer EIR/EIS. That is Page 41. In fact, this
5 doesn't show 2001. It shows 2002 through -- back to 1950.
6 From 1980 to 2000 has the elevation of the Sea been within
7 one foot of 228 feet below sea level for that entire time
8 period?

9 DR. ECKHART: According to this graph, yes.

10 MR. KIRK: Is it an astounding modeling accomplishment
11 that your model in the year 2000 projected the Sea would be
12 within one foot of where it has been in the past 20 years?

13 DR. ECKHART: I can't address the word "astounding."
14 But I can tell you that developing a model, calibrating it
15 and predicting into the future is a scientific process that
16 requires technologies that, when you do predict something
17 and you pass that prediction, you feel that you have a very
18 good tool.

19 MR. KIRK: Even when you predict something that has
20 been static for the past 20 years.

21 Thank you.

22 No further questions.

23 MR. OSIAS: Was that a question or comment?

24 MR. KIRK: It was.

25 Is it a surprise to you that the model ended up at 228?

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DR. ECKHART: It is not a surprise because of the technology and effort using 50 years of data to project that.

MR. KIRK: Thank you.

CHAIRMAN BAGGETT: Thank you for clarifying that. Colorado River Indian Tribes.

MR. SHEPARD: Yes.

---oOo---

RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT
BY COLORADO RIVER INDIAN TRIBES
BY MR. SHEPARD

MR. SHEPARD: Dr. Eckhart, has the MSCP been implemented for the Lower Colorado River, both the species conservation plan or the EIR/EIS?

DR. ECKHART: No, it has not.

MR. SHEPARD: Do you know how much cottonwood willow and back water habitat the MSCP proposes to conserve?

DR. ECKHART: I don't know.

MR. SHEPARD: Do you know whether the MSCP has sufficient funds to perform the biological conservation measures proposed in the EIR/EIS?

DR. ECKHART: I am personally not aware of that.

MR. SHEPARD: Would it surprise you to know that the MSCP currently only has enough money to operate through the

1 end of this year?

2 DR. ECKHART: Nothing surprises me when it comes to
3 budgets.

4 MR. SHEPARD: Is there any guarantees that the
5 biological conservation measures proposed in the EIR/EIS
6 will actually be implemented?

7 DR. ECKHART: I have no idea.

8 MR. SHEPARD. Thank you.

9 CHAIRMAN BAGGETT: Thank you.
10 San Diego.

11 MR. SLATER: No questions.

12 CHAIRMAN BAGGETT: I have none.
13 Staff.

14 ---oOo---

15 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

16 BY STAFF

17 MR. FECKO: I am hoping you have Volume II of the EIR
18 in front of you. Section 11, I believe it is Appendix F,
19 Water Quality and Hydrology, Page 16 of that.

20 Should be Salton Sea present level salt budget.

21 DR. ECKHART: I got it.

22 MR. FECKO: We discussed that the salt loads incoming
23 were varying from the Colorado River?

24 DR. ECKHART: That's correct.

25 MR. FECKO: If you look at the column all the way on

1 the right, total baseline of salt loading tons per year. It
2 seems to vary quite considerably. In fact, in 2074 the
3 projected is actually less than the year 2000.

4 Is that a -- I assume that is just a function of model.
5 I would like to know if the salinity of the incoming work is
6 increasing steadily how the variations work and why it's
7 actually reduced 75 years from now.

8 DR. ECKHART: This is based on all of the baseline
9 reductions in flow. So recall that this present level salt
10 budget includes those parameters. So even though we project
11 that the salinity is going to be increased to 879 and the
12 fact that IID would require more water for leaching, which
13 means higher diversions at the river, the Secretary of the
14 Department of Interior would impose limits based on his
15 authority for administering the river, and, in fact, there
16 is a cutback to that. So that is why you would see here
17 that we start and end up lower because we projected a higher
18 use, but then that use is cut back to 3.1.

19 MR. FECKO: Thank you.

20 CHAIRMAN BAGGETT: Any other questions from staff?

21 This panel is excused.

22 Mr. Osias, you have any other witnesses today?

23 MR. OSIAS: Yes. I have Dr. Smith. He was sworn
24 already in Phase I. He testified as to his qualifications
25 in Phase I. In order to maximize the ten minutes, we will

1 skip over those.

2 CHAIRMAN BAGGETT: You just had such an enjoyable time
3 last week that you thought you had to come back.

4 MR. OSIAS: You requested water. Do you think you will
5 be there for more than ten minutes?

6 CHAIRMAN BAGGETT: What I would like to get your --

7 MR. OSIAS: I was teasing him.

8 CHAIRMAN BAGGETT: -- direct over, and then we will
9 take a short break.

10 ----oOo----

11 CONTINUED DIRECT EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

12 BY MR. OSIAS

13 MR. OSIAS: Good morning, Dr. Smith. We are here to
14 address your testimony with respect to Phase II. You recall
15 submitting that testimony?

16 DR. SMITH: Yes, I do.

17 MR. OSIAS: Do you have it there in front of you?

18 DR. SMITH: Yes, I do.

19 MR. OSIAS: That is your signature and you signed it
20 under penalty of perjury?

21 DR. SMITH: Yes.

22 MR. OSIAS: You have no corrections to make?

23 DR. SMITH: One clarification. That after submitting
24 this testimony I discovered in some discussion with CH2MHill
25 that they had neglected to send me another component of

1 income. The report talks about employee compensation and
2 propriety income. And there is another concept of income,
3 another source of income which is other property income,
4 which was not included in this report.

5 MR. OSIAS: And the effect of that change would be to
6 do what?

7 DR. SMITH: Basically make the numbers larger. But I
8 think the basic conclusions would be unaffected.

9 MR. OSIAS: Why don't we start with the scope of
10 analysis that you performed. Could you tell us that?

11 DR. SMITH: Sure. I was requested to examine what
12 would be the economic impact if IID were to shift from
13 transactions based on efficient improvements to land
14 fallowing.

15 MR. OSIAS: Unfortunately, you were not here for all of
16 the Phase II discussion on the environment. But there is,
17 let's just say, two methods for creating conserved water to
18 transfer. One is efficiency based and the other is
19 fallowing.

20 You did a comparison of the two?

21 DR. SMITH: Yes, I did.

22 MR. OSIAS: Separate from that, there has been a
23 discussion of how to mitigate environmental impacts and
24 there was, again, two alternatives at least for the Salton
25 Sea. One was habitat ponds with a hatchery and the other

1 was replacement water.

2 Are you aware of that?

3 DR. SMITH: Yes, I am aware of that.

4 MR. OSIAS: In terms of replacement water some have
5 suggested fallowing. Are you aware of that?

6 DR. SMITH: Yes.

7 MR. OSIAS: Did your study analyze economic impacts of
8 creating water for transfer by fallowing versus nonfallowing
9 without considering the environmental mitigation component?

10 DR. SMITH: That is correct.

11 MR. OSIAS: So you only studied the impact of fallowing
12 up to 300,000 acre-feet and not any additional fallowing
13 that might be needed if somebody chose to go a mitigation
14 route involving fallowing?

15 DR. SMITH: That is true. And moreover, the study did
16 not look into other economic consequences of any form of
17 mitigation.

18 MR. OSIAS: Before we get into that, would you expect
19 the impacts of fallowing for mitigation to be the same as
20 the impacts for fallowing for creation of water to transfer?

21 DR. SMITH: Yes, I would.

22 MR. OSIAS: But for a volume change?

23 DR. SMITH: Yes.

24 MR. OSIAS: Let's go through -- how did you analyze the
25 economic impacts of shifting from a efficiency conservation

1 to following conservation?

2 DR. SMITH: I took advantage of the economic analysis
3 that is available, I guess, in this document that you have
4 been spending time on. This is Appendix G of the CH2MHill
5 draft environmental report.

6 And what they do is they start with a baseline, which I
7 would suspect has been discussed extensively in at least in
8 my absence, and look at what would be the impact if you went
9 to efficiency based transfer versus that baseline, and then
10 they looked at other alternatives that were saying what
11 would the be impact if you had following base transfers
12 relative to that baseline.

13 So what I did was take the material that is available
14 in the environmental report and basically compared those
15 two, basically netting out the baseline, if you will, that
16 was used by CH2MHill in the environmental review.

17 MR. OSIAS: And did you reach any conclusions on what
18 the economic consequences of the following versus efficiency
19 conservation would be?

20 DR. SMITH: Yes, I did.

21 MR. OSIAS: What are those conclusions?

22 DR. SMITH: Well, a following based transaction
23 actually has negative third-party economic impacts, and an
24 efficiency based transaction has positive third-party
25 economic impacts. So, therefore, a switch, if you will,

1 from a nonfalling based transaction to a fallowing walks
2 away from what I call an economic stimulus to embrace an
3 economic list in terms of third-party impacts.

4 MR. OSIAS: What kind of third-party impacts did you
5 look at?

6 DR. SMITH: Basically two, employment and income.

7 MR. OSIAS: Within Imperial Valley?

8 DR. SMITH: Within Imperial County.

9 MR. OSIAS: Do you have a range of magnitude for the
10 employment impact from switching from efficiency to
11 fallowing?

12 DR. SMITH: Yes, depending on the time period. If I
13 just may explain. CH2MHill broke up the proposed 75 years
14 into seven. I think they called them blocks of time periods
15 to reflect the buildup over quite a few periods of years to
16 the 300,000. And basically, if you look out over a period
17 of time where we are getting to a significant build-out into
18 the quantity of water transferred, the switch from
19 nonfalling to fallowing, depending on how you want to look
20 at this, would result in a loss of anywhere a thousand to
21 2,000 jobs.

22 MR. OSIAS: The longer the term the more impact?

23 DR. SMITH: Correct.

24 MR. OSIAS: That is because there is more water
25 involved?

1 DR. SMITH: Correct.

2 MR. OSIAS: In terms of the income impact that you
3 analyzed, what is the magnitude of the consequences of the
4 switch?

5 DR. SMITH: Well, just summarizing basically a
6 nonfallowing transaction would generate on average about 20-
7 to \$25,000,000 a year 2001 dollars. So these are inflation
8 adjusted dollars.

9 MR. OSIAS: To whom?

10 DR. SMITH: To employees and proprietors in Imperial
11 County.

12 MR. OSIAS: Who are proprietors?

13 DR. SMITH: Proprietors are people who own businesses.

14 MR. OSIAS: Like the seed or tire salesman, or whatever?

15 DR. SMITH: Whatever. Provider of agricultural
16 services.

17 MR. OSIAS: The proprietor is not the farmer who might
18 be getting paid to fallow?

19 DR. SMITH: That is true.

20 MR. OSIAS: I interrupted you because I didn't know
21 what proprietor meant.

22 Continue with your answer.

23 DR. SMITH: Whereas, the range of impact of a loss from
24 fallowing is going to depend on the assumptions made, if you
25 will, about which crops are fallowed. The CH2MHill study

1 looked at what they called a full crop mix which was
2 basically the assumption that on a going forward basis the
3 crops that would be fallowed with respect -- would reflect
4 their historical proportions in a defined ten-, 12-year
5 period. And those losses, Attachment 5 -- I apologize, Mr.
6 Chairman, I don't know this exhibit number -- I do. It is
7 65. Exhibit 65, Attachment 5. As you can see, they build
8 up sort of a long term here, looking at employee
9 compensations and proprietor's income, the losses in long
10 term would be about \$30,000,000 a year.

11 MR. OSIAS: Each of the numbers you give me, 20,000,000
12 or 30,000,000, are those present value numbers?

13 DR. SMITH: Those are in 2001 dollars.

14 MR. OSIAS: Annual numbers?

15 DR. SMITH: Annual numbers.

16 MR. OSIAS: In your analysis did you factor in the
17 impact of payments that would be made to farmers to fallow?

18 DR. SMITH: Yes. What is done in the economic analysis
19 in this draft environmental document is that it really looks
20 at three, if you will, economic events. For a nonfallowing
21 program it looks at the projects that would be implemented.
22 And that was a mix of on-farm where the tailwater recovery
23 system was the benchmark technology, my word not Hill's, and
24 also a phase in of system.

25 Basically, what they do is track what would be the

1 impact on the local economy of the implementation of those
2 sorts of projects. Job creation, business creation and
3 related income derived from that expanded activity.

4 The second block they look at would be if you fallow
5 reduction in acreage. What is the impact of that on goods
6 and services that would otherwise have been sold in the
7 production of those crops and the indirect impacts on other
8 people who service those goods and services.

9 And then the third component would be what is the
10 impact that the compensation that is paid in terms of its
11 impact on the economy. And in that last piece what is the
12 assumption of CH2MHill in this study is that the economic
13 stimulus, if you will, from the contract payments that are
14 received in excess of direct costs. And if you recall my
15 Phase I testimony, direct cost is an underestimate of full
16 economic cost. But putting that issue aside, is that the
17 economic impact on the local economy of either the payments
18 to on-farm participants or withholding of revenues by the
19 District to try to offset the third-party impacts, that
20 those are equally effective in terms of stimulating the
21 local economy.

22 MR. OSIAS: Director, I am out of time. And if I might
23 just ask for his concluding opinion.

24 CHAIRMAN BAGGETT: That would be fine.

25 MR. OSIAS: Dr. Smith, would you give us your

1 conclusions with respect to the analysis on the impact to
2 Imperial County between these two alternatives?

3 DR. SMITH: Yes. I already stated my conclusion in terms
4 of jobs. If I look at the present value of incomes,
5 nonfallowing transaction, depending on one's assumption
6 about early termination risk, create a local stimulus to the
7 economy on the order of anywhere from 4-, 5-, 600-,
8 \$7,000,000. Whereas, fallowing. If it is a full crop mix
9 would basically generate a loss of roughly that magnitude.
10 Whereas if you can target fallowing only on alfalfa, as
11 some have argued, the losses would be materially less as
12 argued, but still would be substantial.

13 MR. OSIAS: Thank you.

14 CHAIRMAN BAGGETT: Thank you.

15 Let's take five minutes and come back with cross.

16 (Break taken.)

17 CHAIRMAN BAGGETT: Cross-examination, Mr. Gilbert.

18 MR. GILBERT: Waive.

19 CHAIRMAN BAGGETT: Mr. Du Bois.

20 MR. DU BOIS: No.

21 CHAIRMAN BAGGETT: Mr. Rodegerdts.

22 MR. RODEGERDTS: Yes, I have some.

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1 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

2 BY CALIFORNIA FARM BUREAU FEDERATION

3 BY MR. RODEGERDTS

4 MR. RODEGERDTS: Dr. Smith, I am Henry Rodegerdts with
5 the California Farm Bureau Federation. I would like to ask
6 some clarifying questions from your analysis.

7 You suggest that double cropping in the Imperial Valley
8 is a factor of economic conditions; is that correct?

9 DR. SMITH: Yes.

10 MR. RODEGERDTS: So if you had a fallowing program
11 instituted in the valley, would you expect that double
12 cropping would increase or, because of the removal of some
13 land, the farmers want to enhance their return or would you
14 think it would stay about the same?

15 DR. SMITH: Ask a clarifying question, you are talking
16 about the land that would not be fallowed?

17 MR. RODEGERDTS: That's right.

18 DR. SMITH: The land that would not be fallowed,
19 certainly that is a distinct possibility.

20 MR. RODEGERDTS: How does double cropping fit into your
21 seven-year crop rotation?

22 Does it cause it to be accelerated, in other words do
23 we squeeze that seven-year cropping pattern into a fewer
24 number of years because of double cropping?

25 DR. SMITH: In terms of fallowing?

1 MR. RODEGERDTS: Well, in terms of the crop rotation.

2 DR. SMITH: The crop rotation that is my testimony,
3 that is based. As I wrote. On looking at a random sample,
4 I think 52 to a hundred cropping histories of fields that I
5 asked the IID staff to draw, probably 1998 or '99 for other
6 purposes. I said, "Don't give me any IDs, so no growers."
7 I don't know where they were. I just said I had two
8 criteria: one, geographically broad based; and, two, that it
9 is a complete record.

10 From that it is my understanding and staff that I trust
11 their technical expertise drew a random sample. I just
12 looked at the patterns. So you don't have any impression.
13 You just have that's what's happening on the ground. Over
14 the years I also had opportunities through many workshops,
15 private meetings down in the valley to talk to growers. And
16 I'd always sort of test some of these views or inferences I
17 was making about cropping patterns and just talked to
18 people, "Does that sound right?"

19 So on the basis of that testimony, I put out some
20 hypothetical examples that are really based on actual
21 patterns that are there. I just can't tell you which
22 parcels because I asked for -- I didn't want to know whose
23 land I was looking at.

24 So in that context, that's the way things are now. If
25 you were to have fallowing, first of all, I think it would

1 depend on which crop was fallowed. If I had fallowing that
2 is based on, quote, the representative crop mix that was
3 studied in the Hill draft environmental review, certainly
4 one would anticipate that some of those otherwise fallowed
5 vegetables may move elsewhere, intensify the double
6 cropping. However, I don't think, based on the calendars I
7 put out, I think Attachment 2 in my testimony, the
8 calendars, pro forma calendars of timing of planting and
9 harvest. And by the way, I apologize, the footnote got cut
10 off. It's probably Stratecon's fault, not Allen Matkins.
11 Is that what was based on actually the crop guidelines. I
12 am sure you are very familiar with those publications, where
13 they have the cultural practices.

14 MR. RODEGERDTS: Yes.

15 DR. SMITH: And I just summarized in that chart. I
16 don't necessarily anticipate -- I have a -- see a necessary
17 compression there. So, in that sense you may not have a
18 compression.

19 MR. RODEGERDTS: Looking in the attachment, say you
20 looked at Attachment 3, the next one, your pro forma annual
21 cropping patterns. Then was that developed from your
22 informal interviews with the growers out in the field and
23 over the years and what the District gave you as to the
24 cropping patterns?

25 DR. SMITH: Yes. I would say mostly it was based on my

1 look at the random sample of the actual data. And I'd say
2 the discussion with growers over the years was more
3 confirming. So it wasn't like I took notes and used that.
4 It was more looking at the actual histories on parcels.

5 MR. RODEGERDTS: You emphasize in your report the
6 importance that alfalfa plays in the crop rotation in the
7 valley; is that correct?

8 DR. SMITH: Yes.

9 MR. RODEGERDTS: That would generally be considered not
10 as profitable a crop in the valley as some of your vegetable
11 crops that we see in this pro forma cropping pattern?

12 DR. SMITH: Well, I think we have to be careful from an
13 economics perspective. I have to say 15 years ago I would
14 have agreed with that statement, before I actually got
15 involved learning more about agriculture, not only my work
16 in the Imperial Valley but elsewhere throughout the Western
17 United States dealing with farmers.

18 And instead, once you begin to understand there is a
19 cycle, I think I called it, like a seven-year cycle of how
20 land is used. The economic assessment of any crop is not
21 only based on its own individual return but its contribution
22 to the whole cycle. So in that sense, for example, I wrote
23 that if one were to grow year in and year out vegetables,
24 for example, I may be more specific, carrots, year in and
25 year out, one will find that the natural productivity of the

1 of land will fall over time. And, in fact, that carrot
2 grower would have to move elsewhere or to sell the
3 land. And the well-informed buyer would understand that
4 lack -- that diminished productivity. For the carrot grower
5 it is a business decision of growing it intensively for a
6 few years on a roll and just taking the loss on the sale of
7 the land.

8 MR. RODEGERDTS: In that regard, take a look at your
9 column Parcel G and Parcel H on Attachment 3, the ones to
10 the right. There we have a seven-year period, and we don't
11 see hay. By hay you mean alfalfa in the chart?

12 DR. SMITH: Yeah.

13 MR. RODEGERDTS: We don't see alfalfa/hay production in
14 any of those seven years where it is a significant component
15 in Parcels A through F?

16 DR. SMITH: Yes.

17 MR. OSIAS: Ask you not to talk while he is speaking.
18 Makes it hard for Esther.

19 DR. SMITH: Okay.

20 MR. RODEGERDTS: What is the explanation as to Parcel G
21 and H? How does that fit into this scheme?

22 DR. SMITH: I put those in there because of the fact
23 that there were a very few fields in my sample of data that
24 in the seven-year period the District records did not show
25 any growing of alfalfa or hay.

1 MR. RODEGERDTS: That is really the exception?

2 DR. SMITH: Right. I just tried to be sure that the
3 hypothetical didn't lose any of it. I think that is why I
4 said virtually all in my written testimony.

5 MR. RODEGERDTS: When folks are discussing the
6 possibility of fallowing crops in the Imperial Valley, you
7 sometimes hear speculation as to whether the cropping
8 pattern will change, and the suggestion is made that the
9 growers will not continue to produce high cost for low
10 return crops. And it is my understanding that they would
11 suggest that alfalfa/hay fits into the category. Is that
12 your understanding and impression?

13 DR. SMITH: I think, again, maybe I should elaborate on
14 an answer to your earlier question, is that -- as I said,
15 you have to assess the economic contribution of a crop
16 through the whole cycle of land. And as a result, you have
17 to realize that there's issues related to how does the
18 rotation of crops on the same parcel of land impart of the
19 maintenance, long-term productivity of the land.

20 You also have to deal with the fact that, quite
21 frankly, vegetables look very high return on these
22 snapshots, but for that \$5,000 an acre of revenue you got to
23 put 2,500, \$3,000 in the ground, so to speak, and take your
24 yield risk and your price risk.

25 It is much like a financial instrument in crops I've

1 come to conclude. They are high margin, high risk. There
2 is lower margin, lower risk crops. In that sense, as I said
3 in my testimony, risk diversification issues are also
4 important.

5 By the way, the bottom line is that, given the
6 long-term prevalence of alfalfa in the valley, economists
7 would be inclined to conclude that it reflects survivability
8 of that end, the management over the cycle, if you will.
9 And, yes, economic prices can change that may influence the
10 relative mix. But to say that, oh, it is very low margin or
11 losing, and in the face of sustained periods of time and
12 acreage, to an economist those two facts would not be
13 consistent with each other.

14 MR. RODEGERDTS: In your analysis you reference the
15 Mendota study. Do you recall in that study the author
16 concluded that there had been a significant shift away from
17 high profitability, vegetable crops, during that drought,
18 and, in fact, you will find in that report the rotation,
19 this shift away from the production of vegetable crops for
20 the fresh market in the Mendota area was an unexpected major
21 finding in this research?

22 DR. SMITH: Right.

23 MR. RODEGERDTS: It flatly contradicts the expectation
24 that water shortages generally encourage higher value crop
25 production. Just the opposite occurred in the Mendota

1 area. That is what you are talking about?

2 DR. SMITH: Right.

3 MR. RODEGERDTS: That is what you are talking about
4 here?

5 DR. SMITH: There would be things. And I think the
6 other thing to be fair is that we have to distinguish
7 between experiences we get from short term, like the Met
8 two-year experience with Palo Verde, a short-term
9 transaction or three- to four-year drought.

10 What is proposed here is a 75-year deal. And so as a
11 result, I think these other pieces of evidence, what happens
12 in these other situations, is informative, but not need to
13 be determinative because most people, most business
14 practices always say short-term deals are fundamentally
15 different form long-term deals in terms of risk issues, and
16 so on. So we can't blindly extrapolate.

17 With that qualification, I do want to say is that I was
18 also struck by the Mendota experience is something which I
19 called in my testimony is that these economic impact models,
20 which Hills is using the state of the art tool, the MPLAN
21 model, probably the largest. It was developed by U.S.
22 Forest Service to do precisely these types of studies. They
23 are used widely. Our firm has a copy. We get a zillion
24 conference invitations from the vendor because there are so
25 many studies using this tool out there. It's an industry of

1 its own.

2 However, those models don't capture a lot of the
3 dynamics that I think is suggested by the Mendota
4 experience. Because these models, you know, can do 10
5 percent or 20 percent. The 20 percent impacts double the 10
6 percent impact. What happens, though, is that as
7 communities get shocked, you get losses of business, you can
8 see that it is one thing to say, "Oh, don't worry. Your
9 business is 20 percent down." But there are issues related
10 to whether or not that business can survive.

11 And I think in the language of my written report I
12 talked about that there is a threat to the diminution of
13 economic infrastructure that remains to serve those who
14 still remain in business. So as I recollect the Mendota
15 situation, you had issues of also the ability of the farm
16 services businesses to serve those who remained. And as
17 those become economically less vital, their ability, their
18 cost, term, scope of service diminish. And that further
19 puts an impact on the economics of farming that is totally
20 outside the scope of this, of all these models.
21 The reason why I find that important is that if you talk
22 about transaction for a short period of time, for a small
23 amount of water, that is one thing. But as the duration of
24 the transaction grows, as well as its size, I think these
25 issues become more significant.

1 MR. RODEGERDTS: You mention the possible outmigration
2 of population as a result of this kind of change?

3 DR. SMITH: Fundamentally long-term we'll have to have
4 ultimately an outmigration.

5 MR. RODEGERDTS: Do you have an opinion, we oftentimes
6 hear, well, this sort of a third-party impact on the
7 population can be mitigated by funding programs, retraining,
8 new industry?

9 DR. SMITH: Hear this a lot. If I make three responses
10 to that. The cofounder of Water Strategist with me is a
11 gentleman by the name of Roger Bond. He is now off trying
12 to rebuild Eastern Europe. He is no longer with me
13 professionally. But he was expert in economic development
14 throughout the '80s and '90s in about 40 western states.
15 And I always told Roger when we got together to write our
16 monthly, "Can you give me a success story?"

17 One of the difficulties you found is that it is easy to
18 define a program. It's easy to appropriate. It's easy to
19 spend the money. But where do you find evidence of economic
20 success? I will give two examples. I have tried to get the
21 Economic Development Administration, that's an agency within
22 the Department of Commerce whose job is to create economic
23 development, and asked them what is the record. What is
24 the track record in terms of here's a program, how many
25 jobs did you create, how long did the jobs create. And

1 this is evidence that is hard to find.

2 There is another area which is trade adjustment
3 assistance, which has part of another funding, part of the
4 NAFTA process, where you may recall in 1994 with free trade
5 there was concern about loss of jobs, so on and so forth.
6 You go on to the Trade Adjustment, the administration's
7 website. They have three case studies, what they call their
8 success stories.

9 I confess I only clicked on one. It talked about how
10 in someplace some lady got a \$50,000 grant to change her
11 marketing materials into color. And by the way, it was very
12 successful in helping her promote an export business. I do
13 not deny that. I do not deny that success. But in my
14 judgment that is not the type of program that is going to
15 provide the blueprint of how to create economic development
16 in Imperial County. So I am skeptical.

17 MR. RODEGERDTS: As a professional economist in
18 measuring these things, do you have an opinion as to other
19 subtle impacts, family relationships, the impact on the
20 schools, the impact on the church community?

21 DR. SMITH: Yes, I do.

22 MR. RODEGERDTS: Maybe give me your opinion. I might
23 follow up.

24 DR. SMITH: Sure, based on my experience of looking at
25 what has happened in other western states where you have had

1 cities come in and buy actually water rights in Colorado and
2 move 20, 30, 40 percent of water long-term to the Denver
3 area. The evidence is very clear that you have the
4 diminished tax base social services, so on. That I think it
5 is implicit in your question.

6 In fact, in let's see, this month's Water Strategist we
7 published an article about proposed legislation in Colorado
8 that is going to be part of the next legislative session out
9 there related to what should the State of Colorado be
10 actually codifying in the law of how to deal with these
11 third-party impacts. I think these things are real.

12 Other states where we have had some transactions --
13 Colorado is probably the most prominent one here. They have
14 tried to deal with that question. State of Texas is another
15 area where actually I was asked to testify twice before
16 joint session of the Legislature in the last four years on
17 proposed interbasin transfer legislation. The wisdom of the
18 Texas Legislature was actually they threw up their hands.
19 They didn't know how to solve this. So you know what they
20 did? There is a legislative ban against interbasin
21 transfers in the state of Texas right now. They can't solve
22 the problem.

23 MR. RODEGERDTS: Is it fair to say that it might take a
24 generation for a community to recover from this sort of
25 economic impact?

1 DR. SMITH: I am not sure that is fair. Because what I
2 have to say is I think the scope of what we are
3 contemplating here is outside the realm of the database, so
4 to speak. You are really asking me to speculate. And I
5 guess what I would say is that a generation is probably too
6 pessimistic. But I think what is true is that if we were to
7 have an experience here we have broad-based land fallowing,
8 certainly how to promote economic development is going to
9 have to get out and become much more effective than it has
10 to date. And I guess that would be a new form of
11 entrepreneurship.

12 MR. RODEGERDTS: In your analysis you speak of an
13 indirect effect, what you characterize as an indirect effect
14 with the lost income component and induced effect, which is
15 the additional economic activity. And later on, I think,
16 you also refer to the induced effect explanation by the
17 economic stimulus.

18 Is this the multiplier effect that we oftentimes hear
19 talked about these things?

20 DR. SMITH: Yes, yes. Right, right. Where that
21 language came from is last summer the Bureau of Reclamation
22 was looking at the possibility of fallowing part of the
23 Salton Sea Authority project. And IID sat down with the
24 Bureau of Reclamation. I represented IID. The people from
25 CH2MHill who did the economic report were with me and we had

1 many meetings with public agencies just talking about the
2 different views of the economic impacts of fallowing. In
3 that forum this sort of trilogy was used. So I guess it's
4 the 21st century version of multipliers.

5 MR. RODEGERDTS: On Page 8 you indicate that the annual
6 income losses by reason of fallowing could eventually be as
7 great as \$30,000,000. And then on Page 9 you speak of
8 annual economic loss perhaps approaching 50,000,000.

9 Could you reconcile those two figures for me?

10 DR. SMITH: Sure. The 30,000,000 is relating to what
11 is -- it is a summary, I think, of -- summary statement as
12 it relates to Attachment 5, which is the annual income lost
13 by fallowing under what I call the representative crop mix.
14 I subsequently went back. I think Hill calls it the full
15 crop mix. Let's not get hung up on that adjective.

16 Remember, they did an analysis as relative to their
17 baseline where their baseline was, I guess, no deal. You
18 have up to 30,000,000 annual losses. The switch to
19 fallowing does two things. By switching to fallowing not
20 only do you get the economic loss to the third parties but
21 you forego the economic stimulus, which I summarized as --
22 if we turn to Attachment 4, since I was looking at
23 long-term economic loss from fallowing, Attachment 5. I
24 went to the long-term economic stimulus in Attachment 4,
25 which is roughly 20,000,000. So I am giving up 20,000,000,

1 losing 30-. My switch from a nonfollowing to following
2 transaction it is now \$50,000,000 loss.

3 MR. RODEGERDTS: Thank you.

4 And my final question, in your concluding remarks to
5 the direct examination you threw out the figures, I think,
6 ranging from 400,000,000 to 600- to 700,000,000. I didn't
7 quite understand what those figures represented.

8 DR. SMITH: Sure. Let's go to Attachment 12. And
9 basically it is very common. If you've seen income flow for
10 an economist, it is pretty hard not to calculate a present
11 value. I just couldn't resist. Because as -- the reason
12 why one does that is, again, this is a very important
13 distinction for the long-term nature of the transaction.
14 Annuals are nice if you are talking about a short-term deal.
15 But you are talking about up to 75 years. So what
16 Attachment 12 is, it looks at the present value of the
17 income stream in Attachment 5.

18 And those who are familiar with present value analysis,
19 the interest rate which you choose is very critical to the
20 calculation. As I explain in my report, the interest rate I
21 use is the treasury rate plus a default risk assumption
22 adjusted by rate of inflation. What I do as shown on this
23 table on Attachment 12, under my different assumptions about
24 early termination risk and annual probability, I keep in
25 mind for that assumption what is the expected duration of

1 the transfers. That is the next column. Then I just
2 calculate under those different assumptions what is the
3 present value, if you will, of that economic stimulus to
4 third parties. And I summarize, that is what I summarized
5 by saying, geez. You know it is sort of like look at the
6 painting. What do you see? I see hundreds of millions of
7 dollars here, depending on my assumption of the early
8 termination risk.

9 MR. RODEGERDTS: That is a default phrase you use,
10 early termination?

11 DR. SMITH: Right, right. And by the way, the reason
12 why I show assumptions of different early termination risks
13 that economic financial valuations, issues about risk of
14 interruption of anything is always a very standard issue.
15 And don't ask me to opine necessarily where I think in the
16 table it is. But bottom line, I think the table is within
17 this range of assumptions. We are still in those magnitudes
18 of dollars.

19 In Attachment 13 looks after the same present value
20 type of calculation, what is the economic loss of following
21 as opposed to the Hill baseline. And I show it for both the
22 all crop fallowed scenario as well as if it is only
23 alfalfa.

24 MR. RODEGERDTS: Thank you. You have been very
25 helpful.

1 CHAIRMAN BAGGETT: Thank you.

2 Mr. Rossmann.

3 ---oOo---

4 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

5 BY COUNTY OF IMPERIAL

6 BY MR. ROSSMANN

7 MR. ROSSMANN: Sir, have you ever made a presentation
8 to the Imperial County Board of Supervisors?

9 DR. SMITH: No.

10 MR. ROSSMANN: You might think about that.

11 DR. SMITH: I may have to clear that with my client.

12 MR. ROSSMANN: Too bad your client didn't have that
13 happen sooner. As Justice Frankfurter said, wisdom comes so
14 seldom we won't take it if it comes a little late.

15 DR. SMITH: Is that a question?

16 MR. ROSSMANN: That is an observation.

17 CHAIRMAN BAGGETT: Could you please --

18 MR. ROSSMANN: Yes, sir.

19 CHAIRMAN BAGGETT: Thank you.

20 MR. ROSSMANN: Because this Board uses the term
21 "third-party impact" in a specific way, would you define
22 your definition of third-party impact?

23 DR. SMITH: Sure. My definition of third-party impact,
24 here we are talking about economics.

25 MR. ROSSMANN: Yes, sir.

1 DR. SMITH: -- is the economic impact on parties that
2 are not in the transaction. And what does that mean? It
3 means primarily either IID/San Diego and landowners,
4 participating landowners in the District.

5 MR. ROSSMANN: So people other than San Diego, the
6 Imperial Irrigation District as a corporate entity and those
7 within the District who farm or own the land?

8 DR. SMITH: Those who would be in contract to conserve
9 of water.

10 MR. ROSSMANN: Yes, sir.

11 DR. SMITH: You may not have a hundred percent
12 participation, but that is the source of distinction.

13 MR. ROSSMANN: Let me go through your attachments.
14 I'm not going to be so courageous as to call them tables or
15 graphs, but let's look at attachment -- I just want to go in
16 order and get some clarification.

17 Attachment 6 --

18 MR. OSIAS: That is in order?

19 MR. ROSSMANN: Because the first five I don't have
20 questions on.

21 CHAIRMAN BAGGETT: Are you encouraging more questions
22 here?

23 MR. OSIAS: No, I'm sorry. I'm sorry.

24 MR. ROSSMANN: I'm looking at the bar here. I guess
25 this is a graph. I hope I am not being too courageous to

1 suggest this is a graph.

2 DR. SMITH: Yes.

3 MR. ROSSMANN: This is cumulative for -- each bar here
4 represents a cumulative loss for the five-year period in
5 question; is that correct?

6 DR. SMITH: No. It is the annual rate of loss.

7 MR. ROSSMANN: So if I were to make a pen and ink
8 change so that when I talk to my client about this next
9 week, if I put annual in front of economic loss, that would
10 be an appropriate thing to do?

11 DR. SMITH: Yes, it would. In fact, that was an
12 oversight on our part, we had annual in the title of the
13 others.

14 MR. ROSSMANN: And let's just go through the rest of
15 those in order. Is that going to be true for No. 7?

16 DR. SMITH: Yes.

17 MR. ROSSMANN: And No. 8?

18 DR. SMITH: Number 8, yes.

19 MR. ROSSMANN: I think No. 9 you do have the word
20 "annual" in there?

21 DR. SMITH: Yes. I think it would be confusing to add
22 it.

23 MR. ROSSMANN: Attachment 10, would also be that?
24 Would that be correct?

25 DR. SMITH: Yes, that would be correct.

1 MR. ROSSMANN: Whereas, I am looking at Attachment 12
2 and 13, and I take it those are when you have total local
3 income. Are those cumulative or are those --

4 DR. SMITH: That is present value.

5 MR. ROSSMANN: Present value over time, whether it is
6 75 to 20 years?

7 DR. SMITH: Well, actually, it is over a 75-year term.
8 But when you enter in an assumption about early termination
9 risk, what you are doing is putting in a probability that
10 you will terminate sometime before 75 years.

11 MR. ROSSMANN: Yes, sir.

12 DR. SMITH: The calculation is over 75 years, but in a
13 high annual termination risk, let's say at 5 percent, your
14 probability of getting the 75 years is very low. But that
15 little amount is in the calculation of present value.

16 MR. ROSSMANN: Thank you, sir.

17 You did not calculate in your third-party impacts loss
18 of taxation income to the county or political subdivision as
19 resulting from a lower real property or unsecured sales tax
20 revenue?

21 DR. SMITH: I did not.

22 MR. ROSSMANN: Would it be easy enough to do the sales
23 tax by just multiplying the tax rate by the loss to
24 proprietor's income? Or is that too simplistic?

25 DR. SMITH: No. It is more complex than that. In

1 fact, MPLAN does give you an estimate of what they call
2 taxes. I think they call it indirect and excise taxes. But
3 that includes both the sales and local income. And you
4 would have to take assumptions about the relevant tax rates
5 to undo that.

6 MR. ROSSMANN: You didn't perform that analysis
7 yourself?

8 DR. SMITH: No.

9 MR. ROSSMANN: Your review of CH2MHill's work is that
10 they didn't do it either?

11 DR. SMITH: What they do is they report in the
12 appendix, I think, out separately. They do not break that
13 in the way I just said, if you wanted to focus solely on
14 what happens to the taxes of, let's say, Imperial County if
15 you happen to be interested in that question.

16 MR. ROSSMANN: Does MPLAN also deal with real property
17 taxes?

18 DR. SMITH: Yes. But you have to be very careful of
19 the use of the MPLAN model. Because what they do is when
20 you buy the model you get the data, let's say, for county,
21 let's say hypothetically Imperial. Quite frankly, these
22 people who do this data, they don't know every county in the
23 United States. So what they do is make certain assumptions
24 that they think is sort of a good starting point. And the
25 user of the MPLAN model must go ahead and then start

1 adapting that off-the-rack version to the relevance of the
2 county in question.

3 If I may continue.

4 MR. ROSSMANN: Yes.

5 DR. SMITH: I referenced earlier discussions last
6 summer between IID and other agencies, Salton Sea Authority,
7 on, shall we say, changing different views on the economics
8 of land fallowing.

9 MR. ROSSMANN: Yes, sir.

10 DR. SMITH: And one of the things that Hill was
11 instructed to do was to meet with Mr. Allen Kleinman
12 [phonetic], the Federal Bureau of Reclamation economist who
13 is doing the work. They actually came up, my
14 understanding, to the Sacramento office and agreed on the
15 calibration of sort of the adaptation of the MPLAN model.
16 So that there was a meeting of the minds, if you will, of
17 how to take the off-the-rack version and go ahead and go
18 ahead and try to make it tailored as closely as possible to
19 the relevance of Imperial County.

20 Since Hill did not break out the tax issue, I did not
21 discuss the issue with Hill. But if you were to break out
22 the property issue, because you raise the question, one, of
23 course, has to be cognizant of the Prop 13. Since Prop 13
24 is relatively unique in comparison to other states. The
25 off-the-rack version, if you will, does not take into account

1 Prop 13.

2 MR. ROSSMANN: Is it possible -- you have estimated the
3 loss of jobs that would result or that could result under
4 various scenarios. From that can you project the social
5 services cost of dealing with that much unemployment?

6 DR. SMITH: I have not done that.

7 MR. ROSSMANN: Is that a standard analysis that appears
8 in the practice?

9 DR. SMITH: Yes, it is. For example, during the 1991
10 drought bank, I think it was Yolo County, take a local
11 county, Yolo County was very concerned about the impact of
12 falling into the drought bank and actually submitted, I
13 think, a check or invoice, or whatever, correct my testimony
14 here, an invoice to Department of Water Resources for
15 estimated amount of the social service. I did not audit
16 that check or invoice, so I have no idea about the method,
17 but clearly someone thought they should. They can calculate
18 that.

19 It is my recollection that, in fact, finally DWR did
20 remit money. It is also my recollection -- I think we
21 published this four months ago -- that the drought water
22 bank actually puts aside a portion of payments for
23 third-party impact.

24 MR. ROSSMANN: When you say we published, that was in
25 your monthly --

1 DR. SMITH: Water Strategist which is referenced in the
2 Phase I hearings.

3 MR. ROSSMANN: Do you know the percentage that
4 agriculture accounts for in the total economy of Imperial
5 County?

6 DR. SMITH: Well, allow me to give you a conservative
7 estimate. I would say it is roughly 30 percent. Why is
8 that conservative? That is just looking at the industry
9 that is -- let me back up.

10 The federal government publishes through the
11 Department of Economic Analysis, which is within the
12 Department of Commerce. They have a local and regional
13 income service. You can go on their website and click and
14 bring up the county, and it will show you since 1969 sources
15 of income by sectors.

16 Okay?

17 MR. ROSSMANN: Yes, sir.

18 DR. SMITH: If you look at that data for the last ten
19 years and look solely at farming and ag services, you will
20 get roughly, it varies a little bit, but if recollection
21 serves me roughly 30 percent of the income is in those
22 sectors. Why is that a conserve estimate? Because you have
23 the affect of that economic activity on the other
24 industries.

25 MR. ROSSMANN: Doesn't account, for example, the county

1 ag commissioner? He would be probably in the government
2 sector?

3 DR. SMITH: He would be the government sector. But
4 that was not the order of impact I was contemplating. I was
5 contemplating instead that the presence of agriculture and
6 agricultural services, of course, creates demands for other
7 services within the economy, far beyond the agricultural
8 commissioner.

9 MR. ROSSMANN: I was using him as an illustration.
10 Perhaps he might even be still with us today.

11 I don't know of the opposite adjective to conservative,
12 but a more liberal, if you will, estimate of the percentage
13 of economy, what would be upper range in your estimation?

14 DR. SMITH: Those who know me will know that it is hard
15 for me to contemplate to that exercise. It is hard for me
16 to give a basis for a liberal estimate because I do not have
17 the information available for me to give you a credible
18 estimate.

19 MR. ROSSMANN: Can we focus, sir, in conclusion, let's
20 go back to your Attachment 3 on pro forma cropping
21 patterns.

22 Now, hearing some of the other questions in the last
23 few days, one begins to conceive of a program that might
24 actually carry out the Biblical commands to leave your land
25 actually fallow for a whole year every seven. And let's

1 assume on this Attachment 3 that on every one of these
2 parcels, for example, one year where you have lettuce and
3 cotton, there is fallowing for that entire year for the
4 purpose of generating conserved water. And so that you
5 really wound up with an eight-year pattern.

6 What would the impact of that type of a program be?
7 How would that change your estimation of -- how would that
8 form of fallowing produce economic impacts in the county?

9 DR. SMITH: I hesitate to ask you to elaborate. Let me
10 use a different word here. Are you contemplating a year
11 fallowing like, for example, we take year three in the
12 chart. We go across the parcels, is that what you are
13 contemplating?

14 MR. ROSSMANN: No, sir.

15 DR. SMITH: Or are you contemplating a contract where
16 someone would enter where they would get an order no more
17 frequently than once out of every eight years not to grow
18 anything?

19 MR. ROSSMANN: But by contract each parcel holder here
20 not in the same numbered year, but once in the cycle every
21 eight years would go fallow. Let's use that as a pro
22 forma. And so they would not all happen concurrently. One
23 would try to design the program, in fact, to minimize
24 cumulative impact in a given year.

25 But my question to you: Would that still produce a

1 significant adverse economic impact that sort of a, if you
2 will, rotational program?

3 DR. SMITH: Yes, it would. I think the issue that I
4 had -- by the way, I apologize but I think in terms of
5 contract in my world. I am burdened this way. But I find
6 it useful to think in terms of the hypothetical contract.
7 One of the issues would be to what extent could one
8 anticipate the year where your numbers fold. That would be
9 an issue for the analysis. So it is your hypo. Which did
10 you have in mind?

11 MR. ROSSMANN: That there would be a program, if you
12 will.

13 DR. SMITH: But that is the program. The point is,
14 again, allow me to go back to my hypo and see if it works
15 for you.

16 I hypothesize a contract that if a landowner, say
17 Parcel A, a gentleman owns Parcel A. I guess the terms of
18 the contract is no more than one out of eight years you will
19 get an order with notice not to grow a crop.

20 Is that what you're contemplating?

21 MR. ROSSMANN: Yes, sir.

22 DR. SMITH: One of the questions I have about your hypo
23 is whether or not the year when this person would get the
24 notice is that all predictable or not.

25 MR. ROSSMANN: Yes, let's assume it's predictable.

1 And, in fact, deliberately on would set it up in advance so
2 that the eight farmers here would know what year that is
3 going to be and that it would be spread out over the seven
4 years.

5 DR. SMITH: Just be sure you're communicating the
6 contract, the master contract reads Parcel A is the barrel
7 in year one and Parcel B is in the barrel year two, et
8 cetera.

9 Then I think we are to the issue of how will people
10 adapt or anticipate this response to that rule. And that
11 gets back to the question which I discussed in my report, to
12 what extent can you successfully target any crop of choice
13 or will you be interrupting, if you will, the full mix? And
14 I have nothing to add to my written testimony on it, on that
15 issue.

16 MR. ROSSMANN: Have you looked at Palo
17 Verde/Metropolitan, I think they call it, land management
18 program, the program that they tried for two years?

19 DR. SMITH: The one in the early '90s?

20 MR. ROSSMANN: Yes, sir.

21 DR. SMITH: I have.

22 MR. ROSSMANN: Do you have an opinion as to the
23 subjecting of that program in dealing with third-party
24 impacts?

25 DR. SMITH: Well, my best recollection is that they did

1 not deal with any third-party impact in the '92, '93
2 agreement, which I know part of '92 through early '94.

3 MR. ROSSMANN: They are now formulating a new one that
4 has not yet been put into effect?

5 DR. SMITH: Yes, that is. I think there is a proposal
6 for, what do they call it, community development fund or
7 something of that sort.

8 MR. ROSSMANN: Yes, sir.

9 DR. SMITH: Which would have a present value of
10 disbursements of \$6,000,000, which is equivalent to
11 basically around \$2.75 an acre-foot.

12 MR. ROSSMANN: You haven't been involved in that,
13 advising either of the parties, have you?

14 DR. SMITH: Palo Verde or Met?

15 MR. ROSSMANN: Yes.

16 DR. SMITH: No, I have not.

17 MR. ROSSMANN: Have you evaluated that program or that
18 proposal?

19 DR. SMITH: That proposal we published an article in
20 Water Strategist when it came out, basically summarizing the
21 terms and conditions, and we will certainly be tracking it
22 if it ever moves towards close.

23 MR. ROSSMANN: At this time you don't have an opinion
24 as to the effectiveness of that program?

25 DR. SMITH: No. It is my understanding that Palo Verde

1 and Metropolitan are in the process of developing the
2 proposed landowner agreements that they will soon --
3 anticipate soon. Upon completion of the environmental
4 review will then go out and tender -- this sounds like my
5 Phase I testimony, in the sense that after completion of the
6 environmental review, then they will be in position to go
7 ahead and offer contracts. And what will be the response to
8 those contracts? I have no idea.

9 MR. ROSSMANN: There is one distinction in the Palo
10 Verde case there will be a program adopted by the district
11 first before they offer contracts?

12 DR. SMITH: That won't be a distinction. As I
13 testified in Phase I, IID will have a program adopted when
14 they tender the contracts for participation as well.

15 MR. ROSSMANN: I see. With environmental review?

16 DR. SMITH: Upon completion of environmental review,
17 IID would go forward, as I testified in Phase I, and it is
18 my understanding upon completion of environmental review Met
19 will be forward.

20 MR. ROSSMANN: Thank you very much sir.

21 Thank you, sir.

22 CHAIRMAN BAGGETT: Defenders.

23 Nation Wildlife Federation.

24 UNIDENTIFIED SPEAKER: No.

25 CHAIRMAN BAGGETT: Audubon.

1 Sierra Club still not here.

2 PCL.

3 MS. DOUGLAS: I have questions. I think the 15 minutes
4 isn't really enough for me to get my questions I have to do.
5 Could I do this after the break?

6 CHAIRMAN BAGGETT: Let me see if any other party has
7 short questions.

8 Mr. Kirk, do you?

9 MR. KIRK: I probably can do it within 15 minutes.

10 CHAIRMAN BAGGETT: Why don't we just switch orders so
11 we can do it.

12 ----oOo----

13 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

14 BY SALTON SEA AUTHORITY

15 BY MR. KIRK

16 MR. KIRK: Morning, Mr. Smith or Dr. Smith.

17 Do you prefer Dr. Smith?

18 DR. SMITH: Yes.

19 MR. KIRK: Dr. Smith, since I wasn't here for the
20 qualification, as I understand you have extensive
21 qualifications in economics, and I assume you have a very
22 good familiarity for the Hill analysis and this section,
23 3.14 in the transfer EIR/EIS, the socioeconomic section.

24 DR. SMITH: Right, and in particular Appendix G.

25 MR. KIRK: I would like to turn your attention -- do

1 you have a copy of the EIR available to you?

2 DR. SMITH: I suspect, seeing all these here.

3 MR. KIRK: Volume 1.

4 Trying to do this within 15 minutes, counsel.

5 DR. SMITH: Mr. Kirk, what section?

6 MR. KIRK: Turn to Page 3.14-23. It's towards the
7 end. It's about three pounds into the document. The page
8 number is 3.14-23.

9 DR. SMITH: Okay.

10 MR. KIRK: Table 3.14-10.

11 DR. SMITH: Just a second, Mr. Osias is slow.

12 MR. OSIAS: And I can't turn pages quickly, either.

13 MR. KIRK: This table is titled "Proposed Project
14 Component and Aggregated Socioeconomic Impacts Using Only
15 On-Farm Conservation."

16 If you see that table, that first column assumes the
17 proposed project along with what is called HCP number one,
18 it you remember that is the fish ponds, et cetera?

19 DR. SMITH: Right.

20 MR. KIRK: What we have done here or what Hill has done
21 here, I gather, is added up these amounts, conservation
22 impacts, plus \$55,000,000 loss of \$16,000,000 because of
23 some fallowing, et cetera, et cetera. And the aggregate
24 impact and -- the aggregate impact is actually increased in
25 the value of business output of \$29,000,000; is that

1 correct?

2 DR. SMITH: This is the conservation and transfer.
3 What is the IOP?

4 MR. KIRK: It is the Inadvertent Overrun Policy. So
5 it's in addition, some following to accomplishing that.
6 It's a small part of the project.

7 DR. SMITH: Right.

8 MR. KIRK: John, is that fair? Is John Eckhart here?

9 MR. OSIAS: He is not on the stand.

10 MR. KIRK: All right. Withdrawn.

11 Dr. Smith, the aggregate impact is a positive impact of
12 \$29,000,000 in business input, business output to the
13 preferred project, to the proposed project. Is that not the
14 case?

15 DR. SMITH: Yes. What I see -- may I elaborate here?

16 MR. KIRK: Sure.

17 DR. SMITH: My analysis looks at the conservation and
18 transfer impacts. That is getting up to the top of the
19 line. Then, as you point out, there is an IOP, Inadvertent
20 Overrun Program, which is a deduct. We had some other
21 deducts and some other deducts, and you get to a net value
22 down here. I think it is fair to characterize that my
23 testimony is about the top line.

24 MR. KIRK: Fair enough.

25 So the top line is the \$55,000,000 net increase or

1 gross increase in business output?

2 DR. SMITH: Yes. But that is not my measure of
3 income.

4 MR. KIRK: Fair enough.

5 That is a measure of business output?

6 DR. SMITH: Right.

7 MR. KIRK: Could you turn to the following page. And
8 under the Salton Sea -- I'm sorry, it's actually two pages
9 following, 3.14-25.

10 DR. SMITH: Yes.

11 MR. KIRK: The section entitled Salton Sea. If you
12 could refer to the last sentence there.

13 Does that last sentence in the first paragraph read
14 \$80,000,000 of business output in 1987 would be lost to the
15 Imperial and Riverside economies every year after the
16 ultimate decline in the sports fishing industry under the
17 baseline in Alternative 1, no-project?

18 DR. SMITH: Actually, the full sentence reads: Worst
19 case scenario would that all recreation activity.

20 MR. KIRK: Fair enough. I didn't highlight the first
21 part. So the worst case is \$80,000,000 in business output
22 lost every year to Imperial County?

23 DR. SMITH: Right. That is business output.

24 MR. KIRK: In fact, table -- the previous table we
25 looked at on Page 3.14-23 was also a measure of business

1 output?

2 DR. SMITH: Right.

3 MR. KIRK: And as we talked about, the last row on that
4 is the aggregate impact, Table 314-, the aggregate impact is
5 \$29,000,000 in the black, a positive increase in the
6 business output from the proposed project of 29,000,000.
7 But does not, in fact, include the loss of up to \$80,000,000
8 on business output as described on Page 3.14-25; is that
9 correct?

10 DR. SMITH: I guess you are asking me to read this
11 because I did not prepare the table on this page nor did I
12 conduct the recreational analysis.

13 MR. KIRK: I appreciate that. You're the only witness
14 that is going to be addressing socioeconomic, so we thought
15 we'd take advantage of it.

16 DR. SMITH: I'll broaden my shoulders.

17 MR. KIRK: I appreciate it.

18 I'm just actually asking you to do a little bit of
19 math. Assuming the Hill analysis is correct, the Hill
20 analysis indicates a positive increase of \$29,000,000 to the
21 regional economy on Page 3.14-23.

22 DR. SMITH: Okay.

23 MR. KIRK: On Page 3.14-25 the Hill analysis suggests a
24 reduction in business output of \$80,000,000, up to
25 \$80,000,000, to Riverside and Imperial Counties.

1 Is that correct?

2 DR. SMITH: Well, I'm puzzled, and maybe you can help
3 me here.

4 MR. KIRK: Perhaps.

5 DR. SMITH: At the risk of -- if we go back to the
6 table, this is about a transfer, right?

7 MR. KIRK: Right.

8 DR. SMITH: When I go to the page, the text page, I
9 guess -- I'm sorry, couldn't avoid it, we have to go through
10 this tedium. 3.14.3.4, that is the section title, correct?

11 MR. KIRK: Correct.

12 DR. SMITH: That is the Alternative 1, no-project.

13 MR. KIRK: Correct.

14 DR. SMITH: So I guess I'm a little confused of how I
15 want to take numbers that are related to the project and
16 deduct numbers that are related to the no-project.

17 MR. KIRK: I'm actually glad you are headed there. Two
18 pages later, 3.14-27, first paragraph, and this is under
19 Alternative 2, the conservation and transfer of 130,000
20 acre-feet would result in the acceleration of the adverse
21 effects on Riverside and Imperial Counties by up to 11
22 years.

23 That last paragraph, last sentence in that first
24 paragraph, the present value of lost business input over
25 this period would be about \$790,000,000, present value of

1 \$80,000,000 1987 dollars escalated at 2.2 percent and
2 discounted 5.4 percent for the 12 years.

3 MR. OSIAS: Mr. Kirk, you misread the sentence. You
4 said input.

5 DR. SMITH: Must mean output.

6 MR. KIRK: I do. Thanks for catching it.

7 The present value -- you see the \$80,000,000 again
8 there. I appreciate -- earlier that was under the
9 no-project section. There is some confusion in the document
10 here. I couldn't actually find the project specified
11 distinctly. There is some -- this actually refers back to
12 see discussion under Alternative 1, no-project. But does
13 say here that the present value impact would be
14 \$790,000,000, and that is apparently, and correct me if I am
15 wrong, Doctor, that is apparently multiplying the
16 \$80,000,000 by various factors?

17 DR. SMITH: Well, that is sufficiently vague. It is
18 hard to disagree with that.

19 MR. KIRK: It appears -- in fact, the document is
20 sufficiently vague in this as well. I couldn't find any
21 details.

22 Do you know of any further details?

23 DR. SMITH: What I would suspect, based on the reading,
24 putting aside the potential confusion of an apple with an
25 orange, if you will, what we just discussed, that probably

1 someone took \$80,000,000 in 1987 dollars -- I mean just
2 reading --

3 MR. KIRK: Right.

4 DR. SMITH: -- and escalate that 2.2 percent per year,
5 what that means, that's sort of jargon for that 80,000,000
6 started and grows at 2 and a half percent per year. That is
7 what the economists call a stream of nominal dollars. And
8 then what they must have done is taken the portion of a
9 12-year period and then did the present value analysis,
10 where they use an interest rate of 5.4 percent.

11 MR. KIRK: And they came up with this present value of
12 \$790,000,000.

13 DR. SMITH: Right.

14 MR. KIRK: You didn't do this analysis?

15 DR. SMITH: No, I did not do that calculation. I guess
16 I just want to observe, again, this seems to have some nexus
17 to the no-project.

18 MR. KIRK: It sure does. What they are referring to is
19 the \$80,000,000 per year in the no-project and making it
20 clear that they're speeding things up and tying that back to
21 baseline 11 years, I believe?

22 DR. SMITH: This is not clear me.

23 MR. KIRK: On Page 3.14-25, under Salton Sea, it
24 appears that if you read this second paragraph there, this
25 business output is apparently estimated from a study

1 published in 1989 by CIC.

2 DR. SMITH: Oh, yes, I see that.

3 MR. KIRK: It appears to be related to visitation and
4 tied to the fishery. That is my best estimate, based on
5 that short paragraph.

6 DR. SMITH: Give me a second to read the paragraph?

7 MR. KIRK: Absolutely.

8 CHAIRMAN BAGGETT: While he's reading that, do you
9 have a lot of questions?

10 MR. KIRK: I don't have a lot of questions. About five
11 minutes.

12 DR. SMITH: Prepared to answer.

13 CHAIRMAN BAGGETT: Please.

14 DR. SMITH: That appears to be the case.

15 MR. KIRK: So the \$80,000,000 per year is based on
16 recreational output, business output, that was estimated
17 from that CIC study?

18 DR. SMITH: In 1989.

19 MR. KIRK: It looks like based on a 1987 survey?

20 DR. SMITH: Survey published in '89.

21 MR. KIRK: Does this analysis, to your knowledge, does
22 any of this analysis include other socioeconomic impacts in
23 the Salton Sea region?

24 MR. OSIAS: Objection. Does this mean the CIC or the
25 EIR?

1 MR. KIRK: Does 3.14, the socioeconomic section of the
2 transfer EIR, include any other economic impacts associated
3 with the Salton Sea?

4 DR. SMITH: You mean the whole -- in this whole piece
5 here, sir?

6 MR. KIRK: Actually, yeah. You don't have to read the
7 whole piece.

8 DR. SMITH: I am trying to understand the question.

9 MR. KIRK: It appears, use my assumption, the only --
10 hypothetically -- what I would say is Page 3.14-25, this is
11 the only section that describes no action. 3.14-27,
12 associated with the Salton Sea. 3.14-27, describes the
13 impacts associated with the Salton Sea.

14 I couldn't find any other impacts associated with the
15 Salton Sea decline that has been analyzed in terms of
16 socioeconomic. Do you know of any?

17 DR. SMITH: I have not looked.

18 MR. KIRK: Do you know if the analysis includes impacts
19 on property values from a declining Salton Sea?

20 DR. SMITH: You mean in terms of Page 25 here? If I
21 may --

22 MR. KIRK: In terms of anything associated with the
23 water transfer, EIS/EIR, any of the Hill analysis. Are you
24 familiar with any analysis that IID, Hill or you have done
25 that looks at socioeconomic impacts that would reduce

1 property values?

2 DR. SMITH: I cannot recollect any.

3 MR. KIRK: Are you familiar with Rose Institute Study
4 associated with the Salton Sea that looked at declining
5 property values at the Sea and the impacts of those?

6 DR. SMITH: Could you refresh my memory of the date of
7 that study?

8 MR. KIRK: My recollection, Doctor, is 1989 -- 1999, my
9 apologies; 1999 or 2000.

10 DR. SMITH: Yes, I am familiar with it. Excuse me. I
11 received a copy of that study for which I just breezed
12 through at the time it was prepared.

13 MR. KIRK: Given that short time, we won't go into the
14 details there. To your knowledge, did we look at the
15 economic impacts of windblown dust in the Imperial Valley,
16 health impacts which have socioeconomic impacts and the
17 like?

18 DR. SMITH: Are you asking if the Rose Institute Study
19 did that?

20 MR. KIRK: No. If the transfer EIR/EIS did that, to
21 your knowledge.

22 DR. SMITH: Not to my knowledge. You should understand
23 the low hurdles here. Because I have not reviewed this
24 voluminous document with these questions in mind.

25 MR. KIRK: On Page 3.14, my last question, 3.14, you

1 see the --

2 DR. SMITH: Dash?

3 MR. KIRK: I'm sorry, 3.14-27, where we see the title
4 of that is Impact AS2, adverse change in regional economic
5 conditions would be accelerated by up to 11 years.

6 DR. SMITH: Where are you?

7 MR. KIRK: First paragraph, Page 3.14, in bold. We
8 talked about this earlier that apparently what the analysis
9 has done, and correct me if I am wrong, is taken that
10 \$80,000,000 per year, gone out 11 years using discount
11 rates, et cetera, to come up with the present value business
12 output impact of \$790,000,000; is that correct, to your
13 knowledge?

14 DR. SMITH: That appears to be the case, but I have not
15 fired up the spreadsheet to attest that hypothesis.

16 MR. KIRK: You referred to some controversy about the
17 baseline that is being used in this document in your direct?

18 DR. SMITH: It was only based on evidence of the way
19 people are speaking.

20 MR. KIRK: Fair enough.

21 And, again, you weren't here yesterday, so you don't
22 know the details. If, in fact, the temporal impact was not
23 11 years but 30 years or 50 years, what would we expect to
24 happen to the present value if we use this same math?

25 DR. SMITH: It will grow. And since -- may I finish my

1 answer?

2 MR. KIRK: Just trying to expedite things for the
3 Chairman, Doctor.

4 DR. SMITH: May I finish my answer.

5 CHAIRMAN BAGGETT: Sure.

6 DR. SMITH: Based on the term of this calculation, we
7 have to keep in mind that as you add years, yes, it grows
8 but fewer and few -- excuse me, more and more distant years
9 adds fewer and fewer impact.

10 MR. KIRK: Thank you very much.

11 CHAIRMAN BAGGETT: Thank you very much.

12 We will recess. We will back here at 12:35, start
13 again in one hour.

14 (Luncheon break taken.)

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AFTERNOON SESSION

---oOo---

CHAIRMAN BAGGETT: Back on the record.

---oOo---

CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

BY PLANNING AND CONSERVATION LEAGUE

BY MS. DOUGLAS

MS. DOUGLAS: Dr. Smith, my name is Karen Douglas. I am with the Planning and Conservation League. I have looked briefly at some of your qualifications for doing this economic analysis. They are quite a strong environment. You've got a Ph.D. in -- you have a Ph.D. in economics?

DR. SMITH: Correct.

MS. DOUGLAS: From the Chicago School of Economics?

DR. SMITH: Yes.

MS. DOUGLAS: And you're the chief publisher of the Water Strategist?

DR. SMITH: Yes, ma'am.

MS. DOUGLAS: How long has that been around, or how long have you been there?

DR. SMITH: Since 1986.

MS. DOUGLAS: The Water Strategist, does that evaluate water transfers?

DR. SMITH: We report on water transactions finance, litigation, legislation, anything that in our judgment has

1 something to do with water transfers.

2 MS. DOUGLAS: You also are a senior vice president on
3 Stratecon, right?

4 DR. SMITH: Correct.

5 MS. DOUGLAS: Have you also analyzed water transfer
6 agreements in that capacity?

7 DR. SMITH: Yes, I have.

8 MS. DOUGLAS: How many water transfer agreements would
9 you say you analyzed from an economic perspective in your
10 career? Hundreds? Thousands? Tens?

11 DR. SMITH: Probably, westwide probably 900 to 1,100.

12 MS. DOUGLAS: You were hired by IID in this case to
13 analyze the effects of the fallowing alternative on the
14 economy?

15 DR. SMITH: In terms of Phase II.

16 MS. DOUGLAS: In terms of Phase II, that's right.

17 In terms of your economic analysis what was the unit of
18 analysis? Was it the IID service area or the county?

19 DR. SMITH: Imperial County.

20 MS. DOUGLAS: It was Imperial County?

21 DR. SMITH: Right.

22 MS. DOUGLAS: Could you please explain when you analyze
23 effects of fallowing what do you mean by fallowing.

24 DR. SMITH: What I mean is not growing a crop on an
25 acre of land for a year.

1 MS. DOUGLAS: For a year?

2 DR. SMITH: Right.

3 MS. DOUGLAS: Is your definition of following the same
4 as the definition in the EIR/EIS?

5 DR. SMITH: Would have to look at that definition,
6 because I did not draft it.

7 MS. DOUGLAS: Did you look at it in preparing your
8 testimony?

9 DR. SMITH: What I did is I looked primarily at the
10 socioeconomic Appendix G, which is in the second volume,
11 which you should probably also understand that my business
12 relationship with Imperial goes back till, beginning in the
13 late '80s. So I have been around on a lot of these
14 transactions. And as part of that, after the completion of
15 the Quantification Settlement Agreement I have been involved
16 in representing the District on a few of these 43 other
17 agreements. But also, when the environmental review
18 started, Hill did indeed contact me about the economics of
19 the transactions. And as I testified this morning, I
20 participated, represented the District in other meetings
21 about the economics of following.

22 I have -- I just didn't come into the process right
23 before Phase II.

24 MS. DOUGLAS: Right, you didn't just jump into the
25 process, but you didn't necessarily base your testimony on

1 the definition of fallowing in the EIR/EIS?

2 DR. SMITH: No. The reason why I didn't is because I
3 was familiar with economic analysis, and the economic
4 analysis portion is consistent with my definition.

5 MS. DOUGLAS: Can we quickly go to that definition in
6 the EIR/EIS. It is Chapter 2, Page 2-20.

7 It says --

8 MR. OSIAS: Just a second.

9 DR. SMITH: He's slow.

10 MS. DOUGLAS: He's not too slow. Nobody is quick with
11 these agreements.

12 MR. OSIAS: Also, I didn't have a divider.

13 MS. DOUGLAS: You don't have a version with dividers?
14 Would you like one?

15 MR. OSIAS: Do you have an extra?

16 MS. DOUGLAS: Just to make things go a lot faster for
17 all of us.

18 So are you there now?

19 DR. SMITH: Yes.

20 MS. DOUGLAS: The first sentence in the definitions
21 says, fallowing is defined in broad terms as the nonuse of
22 farmland for crop production during the growing season. Is
23 that consistent with what you defined?

24 DR. SMITH: Yes, I think that would be consistent.

25 MS. DOUGLAS: You say in your testimony, on Page 2,

1 Paragraph 5 of your testimony, you say IID's Board of
2 Directors has a policy against land fallowing; is that
3 correct?

4 DR. SMITH: That is correct.

5 MS. DOUGLAS: Is that all types of fallowing? Is all
6 fallowing? Does IID's Board of Directors have a policy
7 against all fallowing?

8 DR. SMITH: As it relates to the transfer that is,
9 indeed, their policy as of today. By the way, it's been
10 their policy since 1995, to my knowledge.

11 MS. DOUGLAS: You also recognize that historically
12 approximately 20,000 acres of farmland within IID are
13 fallowed each year?

14 DR. SMITH: I guess, and I think probably it's because
15 this business uses the same words to mean totally different
16 things.

17 MS. DOUGLAS: That is part of why we are going through
18 this.

19 DR. SMITH: Right, right.

20 I think when you see data that land is fallowed, that
21 what they mean is for the time period of their observation a
22 crop was not grown. That may be related to all sorts of
23 considerations, including the natural rotation of crops,
24 crops can be between planting or whatever.

25 Whereas, the fallowing we are talking about here, and

1 probably a better definition both in my testimony and in
2 this document, may be fallowing is not growing a crop for a
3 defined period of time for the purposes of transferring of
4 conserved water.

5 MS. DOUGLAS: Do you agree with the testimony of Dr.
6 Eckhart, that fallowing may be a desirable component of the
7 IID water conservation program?

8 DR. SMITH: I did not see Dr. Eckhart's testimony, so
9 it is hard for me to opine.

10 MS. DOUGLAS: If we could go to Chapter 2, Page 31, in
11 the EIR/EIS.

12 MR. OSIAS: I'm sorry, could you give me the page,
13 again?

14 MS. DOUGLAS: Chapter 2, Page 31, just further on in
15 the chapter.

16 MR. OSIAS: I have been assigned page flipping duties.

17 MS. DOUGLAS: I have yellow tabs that make it faster.

18 It says here fallowing may be a desirable component of
19 the IID water conservation program for a number of reasons,
20 which could include the following, and it lists a number of
21 reasons.

22 Do you see that there?

23 DR. SMITH: Yes, I do.

24 MS. DOUGLAS: I am not going to go through all of those
25 reasons. The third is interesting. Short term fallowing

1 would preserve the soil as a resource and allow agricultural
2 lands to be productive and useful in responding to national
3 and international food needs over the term of the proposed
4 project.

5 Does that just mean fallowing is a way of preserving
6 the productivity of the soil?

7 DR. SMITH: Since I didn't write this, it is hard for
8 me to really speculate. But just based on my reading, I
9 would suspect that what is being addressed here is that from
10 time to time land does lay fallow, although I noticed the
11 qualifying short-term, and I don't know what the definition
12 of short-term is.

13 MS. DOUGLAS: I don't believe we have one.

14 DR. SMITH: The evidence does show that, to my
15 recollection, that you will see if you look at -- if you
16 were here for my testimony this morning, I referenced my
17 examination of anonymous cropping histories, and you will
18 see periods of time wherein maybe three, four months between
19 plantings where the land is fallow. And it is my
20 understanding that is indeed related to good farming
21 practices as they relate to allowing the rejuvenation of the
22 productivity of the land.

23 Whether or not you can extrapolate to X years for
24 whatever definition is of short-term fallowing they use is
25 totally a different issue.

1 MS. DOUGLAS: Can we please go back to Chapter 2, Page
2 20, back to the definition of fallowing. In the EIR/EIS
3 there is a distinction made between permanent fallowing and
4 temporary fallowing.

5 DR. SMITH: I'm sorry, could you help me find it?

6 MS. DOUGLAS: It's the definition of fallowing; right
7 underneath the sentence --

8 DR. SMITH: Got it.

9 MS. DOUGLAS: It says the definition of fallowing
10 covers varied methods of implementation and can be
11 implemented over certain time periods. For example, a field
12 could be removed from production on a permanent or long-term
13 basis. Here it is defined as more than four years. Or
14 production could cease temporarily or periodically, i.e.,
15 rotational fallowing for one or more growing seasons, (less
16 than four years or for one or more crops).

17 Is that a logical type of distinction to draw in terms
18 of defining fallowing?

19 DR. SMITH: Well, actually, I think that is probably
20 more related to definition of what we mean by short term
21 versus long term. And whether or not -- if that is
22 understood to be the question. Whether or not the four-year
23 threshold is the proper definition is, I think, the
24 issue. And, again, based on my experience of the cropping
25 histories I have looked at, there is not much evidence, at

1 least, in the sample, the random sample I looked at, of
2 lands being out for three to four years.

3 So any definition that would fall in that is
4 extrapolating beyond the experience of the District today.

5 MS. DOUGLAS: On Page 3, Paragraph 8, of your testimony
6 you say that from an economics perspective the switch to
7 land fallowing constitutes a loss of local income worth
8 hundreds of millions of dollars over the contemplated term
9 of the proposed transfer.

10 So is that your opinion, that there would be a loss of
11 hundreds of millions of dollars?

12 DR. SMITH: Yes.

13 MS. DOUGLAS: Is that opinion based on an assumption
14 that fallowing would be temporary or permanent?

15 DR. SMITH: It is based on the assumption -- again, I
16 was asked as part of my testimony could I address what would
17 be the economic consequences from shifting from the
18 nonfallowing transaction to a fallowing transaction for the
19 term of the agreement. So that would be over the term that
20 is contemplated to be up to 75 years.

21 MS. DOUGLAS: If I could please direct you to Chapter
22 3.5-16 of the EIR/EIS. That is the section heading
23 "Agricultural Resources," Page 16 of that chapter.

24 MR. OSIAS: Page 16?

25 MS. DOUGLAS: Page 16 of that chapter.

1 The second to last paragraph is the assessment of
2 whether or not the following alternative, Alternative 4,
3 would have a significant unavoidable impact to agricultural
4 resources in the IID water service area.

5 It seems from this case the assumption is that
6 permanent fallowing would be employed in Alternative 4? Is
7 that your understanding as well?

8 DR. SMITH: Allow me to read it for a moment, please.

9 MS. DOUGLAS: Please.

10 DR. SMITH: Restate the question.

11 MS. DOUGLAS: Let me clarify it. Let's go down to the
12 word "however," which is about halfway through the
13 paragraph.

14 Are you there?

15 DR. SMITH: Yes.

16 MS. DOUGLAS: However, permanent fallowing could be
17 used to conserve water for the transfer. Therefore, the
18 worst case impact of the proposed project would be permanent
19 fallowing of 50,000 acres of land.

20 Assuming all acreage was permanently fallowed, does it
21 represent a significant unavoidable impact to the
22 agricultural resources in the IID water service area?

23 My question's based on our joint reading of this, is it
24 your understanding that the finding of significant,
25 unavoidable impact to agricultural resources depends on the

1 assumption that fallowing would be permanent?

2 DR. SMITH: From what perspective are you asking the
3 question, because I could see it from possibly two? One
4 would be what would be my interpretation of this.

5 MS. DOUGLAS: I am asking about the EIR/EIS.

6 DR. SMITH: The other would be what the EIS said.

7 MS. DOUGLAS: I am asking you what the EIR/EIS says.

8 DR. SMITH: To me I think it is unclear what it may
9 mean. Allow me to explain where I see the ambiguity. You
10 can say that you are going to fallow hypothetically 10,000
11 acres a year for 75 years. That could be done on a
12 rotational basis which I think is shorthand for meaning
13 there is 10,000 acres fallowed each and every year. But
14 which they are, may vary, I think I got a hypothetical this
15 morning that it moves around, versus the same 10,000. And
16 the economic models that are employed here do not
17 distinguish between those two impacts. If it is a fallowed
18 acre it is a fallowed acre.

19 MS. DOUGLAS: But it says in this paragraph that they
20 took the worst case scenario and they astound the worst case
21 scenario was permanent fallowing. So the finding is based
22 on the worst case scenario.

23 MR. OSIAS: I'm sorry, are you asking this witness to
24 opine as to what bases CH2MHill reached its conclusions?

25 Objection. Ambiguous. I am not sure whether the

1 question is asking for this witness to opine why CH2MHill
2 reached this conclusion or what does he personally translate
3 this to.

4 CHAIRMAN BAGGETT: That is fair. Can you clarify?

5 MS. DOUGLAS: My question is what assumptions CH2MHill
6 used in reaching that conclusion.

7 DR. SMITH: I have not discussed that matter with
8 CH2MHill, so I have no basis to answer that question.

9 MS. DOUGLAS: Except for the paragraph right there in
10 front of you. On the basis of what you read in that
11 paragraph, do you think that they assumed that the worst
12 case scenario was permanent following to reach that
13 conclusion?

14 MR. OSIAS: Objection. Calls for speculation of what
15 CH2MHill assumed.

16 MS. DOUGLAS: I'm not asking him to speculate. I am
17 asking him to speak to his understanding of the paragraph
18 here.

19 MR. OSIAS: First question is what he thought
20 CH2MHill's understanding is. Now you are not interested in
21 that?

22 MS. DOUGLAS: I am interested in how he reads this
23 paragraph.

24 CHAIRMAN BAGGETT: That is fair. How you based on your
25 professional --

1 DR. SMITH: Based on my experience and knowledge of the
2 economic analysis, the way I would read this paragraph is
3 that to the extent that it is thinking it is making a
4 distinction between rotational fallowing of a designated
5 amount of acres versus permanent fallowing of the same
6 quantity of acres, it's a distinction of no difference in
7 terms of the economic impact.

8 So to the extent that one can read this to have
9 something, from the viewpoint of the economic impact study
10 that I conducted, it is not a relevant distinction. There
11 may be other issues related to the EIR/EIS where a
12 distinction may be important. I'm just telling you it is
13 outside the scope of the economic impact.

14 MS. DOUGLAS: You are saying that the distinction
15 between permanent and temporary fallowing isn't relevant?

16 DR. SMITH: In terms of for a given amount of acreage
17 of the same types of crops, for example, if I have a
18 hypothetical of 10,000 acres make it alfalfa, everyone's
19 favorite, the economic impact in these models, in these
20 models, it is important to understand that qualification,
21 10,000 acres of alfalfa that is rotationally fallowed year
22 to year versus the same, in these models they make no
23 distinction in terms of the economic impact. So to the
24 extent that you are trying -- I can understand the language
25 here, why you are asking me the question, there appears to

1 be a distinction in the author's mind here.

2 All I'm saying for the purposes of the economic impact
3 analysis, these models don't make that distinction.

4 MS. DOUGLAS: Thank you.

5 In your testimony on Page 3, Chapter 9 --

6 MR. OSIAS: Paragraph 9?

7 MS. DOUGLAS: I am sorry, Paragraph 9. I'm glad there
8 are not 9,000 paragraphs to your testimony.

9 DR. SMITH: I am too.

10 MS. DOUGLAS: It says here a meaningful economic
11 analysis of land fallowing must take into account cropping
12 practices in Imperial Valley, the intensity of farming and
13 the natural rotation of crops on any specific parcel of
14 land.

15 Would a -- let me start over.

16 Are these the only two factors that should be included
17 in a meaningful economic analysis?

18 MR. SMITH: Those are the two factors that I focused
19 on.

20 MS. DOUGLAS: Do you disagree with the prior testimony
21 of Mr. Du Bois that for a farmer buying property the two
22 most important considerations for that farmer are soil types
23 and availability of water?

24 DR. SMITH: I would not disagree with that.

25 MS. DOUGLAS: So should soil type and availability of

1 water, are they also factored in in a meaningful economic
2 analysis?

3 DR. SMITH: That paragraph is written from the
4 perspective of looking at the District as a whole. And if I
5 were to engage in either A, picking up on Mr. Du Bois'
6 testimony, which I did not hear, but picking up on your
7 question, how you summarized it, indeed if I was acquiring a
8 specific parcel of land that would be among the factors I
9 would certainly look at as well.

10 MS. DOUGLAS: Do you disagree with prior testimony of
11 Mr. Don Cox that farmers decide what to grow on their land
12 based on market prices, basically that they are profit
13 maximizing?

14 MR. OSIAS: You mean Mr. Mike Cox?

15 MS. DOUGLAS: No, I mean Don Cox.

16 MR. OSIAS: He didn't testify. He gave a policy
17 statement.

18 MS. DOUGLAS: I believe he testified at the time.

19 MR. OSIAS: That is Mike Cox, not Don Cox.

20 MR. SLATER: I believe counsel is correct. It is
21 Michael Cox.

22 MS. DOUGLAS: Sorry, thank you for the correction.
23 Michael Cox.

24 Should I repeat that question?

25 DR. SMITH: No. I understand your question. Do

1 economic factors shape crop selection?

2 MS. DOUGLAS: From the farmer's perspective does the
3 desire to maximize the profit shape crop selection?

4 DR. SMITH: Yes.

5 MS. DOUGLAS: So should the rational decision making
6 choices of farmers who want to maximize their profits also
7 be a factor in a meaningful economic analysis?

8 DR. SMITH: Yes.

9 MS. DOUGLAS: On Page 7, Lines 7 through 9 of the
10 testimony you say that conservation by land fallowing
11 assumes that crops not grown would reflect the mix of crops
12 grown in years 1987 to 1989.

13 So the way I understand that is you're assuming that
14 reduction of crops grown by fallowing would be proportional,
15 maintain the same proportions as crops grown.

16 Is that a reasonable assumption given what you just
17 said?

18 DR. SMITH: First of all, can I clarify? This whole
19 paragraph is trying to talk about what were assumptions of
20 the Hill.

21 MS. DOUGLAS: Of CH2MHill. Okay. These are the
22 assumptions of CH2MHill.

23 DR. SMITH: Right.

24 MS. DOUGLAS: Is that a reasonable assumption, in your
25 opinion?

1 DR. SMITH: I think that is a potentially reasonable
2 assumption.

3 MS. DOUGLAS: Is it potentially --

4 DR. SMITH: Allow me to restate that. I think that is
5 a reasonable place for analysis to start.

6 MS. DOUGLAS: In terms of your meaningful economic
7 analysis of the effects of fallowing, just to recap, you
8 said that soil type is important, so a farmer might choose
9 to fallow based on one acre rather another based on soil
10 type?

11 DR. SMITH: I don't think I said that.

12 MS. DOUGLAS: You said that soil type is a part of --
13 is a material decision to a farmer purchasing a certain
14 piece of property.

15 DR. SMITH: Right, right. That is what I said.

16 MS. DOUGLAS: If a farmer were deciding whether or not
17 to fallow one acre rather than another, would that factor
18 into the farmer's analysis?

19 DR. SMITH: That would be one of many factors.

20 MS. DOUGLAS: Another factor might be the productivity
21 of that particular acre versus others?

22 DR. SMITH: I would imagine so. Certainly economics
23 would suggest that.

24 MS. DOUGLAS: Another factor might be the value or the
25 expected profit from the crop grown on that acre, or the

1 alternative would be to grow a certain crop on that acre,
2 farm it with something in mind, the farmer might have an
3 incentive in mind to maximize profits to fallow the acre
4 that would have the lower value crop on it?

5 DR. SMITH: I think you have to be careful when it is
6 related to other portions of my testimony. One has to look
7 at the management of any particular parcel in the context of
8 their portfolio of the holdings, and not only look at it in
9 the context of the portfolio holdings, but also, as I
10 testified this morning, over what I called the life cycle of
11 land management.

12 So it is not just simply a -- not an isolated snapshot
13 nor independent or isolated to a parcel.

14 MS. DOUGLAS: I'm glad you brought up the issue of the
15 portfolio of the farmer's holdings or the farmer's options.
16 Because it seems to me, and let me ask you if you agree with
17 this: Do you agree that a temporary fallowing program that
18 is voluntary would provide farmers with basically an
19 additional market option, add something to the portfolio
20 that they don't currently have?

21 Should I be more specific?

22 DR. SMITH: As long as we are not into the definition
23 of short term or temporary, whatever that may mean. We
24 don't have to go there. Yes, I would agree with your
25 statement.

1 MS. DOUGLAS: For example, if a farmer is looking at
2 his or her options, and he can plant onions or carrots or
3 alfalfa or I could be paid to fallow, for example, it might
4 be part of my risk diversification or my profit maximizing
5 behavior to want to fallow a certain number of acres for a
6 guaranteed return, for example?

7 DR. SMITH: Possibly. It depends on the terms and
8 conditions of the offer. As long as that is understood.

9 MS. DOUGLAS: If you are not going to get paid enough,
10 it is not attractive. I understand.

11 On Page 6, Paragraph 14, of your testimony you talk
12 about economic impacts, direct and indirect, from
13 fallowing. You say here that the direct impact of land
14 fallowing would be farm income lost. There are also
15 indirect effects due to lost income that would have been
16 earned from the sale of goods and services.

17 Just out of curiosity, what is the difference between
18 those two? I just don't quite understand.

19 DR. SMITH: If I just use hypothetical numbers?

20 MS. DOUGLAS: Actually, maybe it would be easier. One
21 of these is lost profits, right? Is something lost profits
22 from not producing?

23 DR. SMITH: Yes, that would be the first, what I call,
24 the direct economics. Actually the farming income loss due
25 to growing crops, which is what I wrote.

1 MS. DOUGLAS: Then you have indirect effects, and can
2 you give me some examples?

3 DR. SMITH: Indirect effect would be, just getting a
4 nexus from my written testimony, would be lost income that
5 would have been earned from sales and goods and services.

6 MS. DOUGLAS: To farmers?

7 DR. SMITH: To farmers. So that would be your labor,
8 the standard litany of input purchases, and things of that
9 sort.

10 MS. DOUGLAS: Indirect effect would be a lessening,
11 less sales of goods and services to farmers. And then you
12 have --

13 DR. SMITH: Just to be sure, just for clarity. The
14 income that would be earned off that.

15 MS. DOUGLAS: Income earned off those sales.

16 DR. SMITH: And the reason why that is important is not
17 necessarily on the labor, but if we take, for example,
18 someone purchases fertilizers, the expenditures is not
19 income because your vendor probably bought it wholesale.
20 That would be income.

21 MS. DOUGLAS: Last of all there is the induced effect,
22 and that is outside of the farming economy. That is people
23 going to restaurants or that sort of thing?

24 DR. SMITH: No. I mean, what is the impact of those
25 income losses as they spend within the local community.

1 MS. DOUGLAS: I understand. Perfect. Thank you. It
2 is always good to make sure we are speaking in the same
3 language.

4 Is it your understanding that IID, if it chose, could
5 potentially give all the money from the transfers to the
6 farmers?

7 DR. SMITH: Certainly, they could contractually have
8 that discretion.

9 MS. DOUGLAS: And if farmers got payments for fallowing
10 land that presumably were above the cost of fallowing, might
11 they reinvest those funds in farming economy?

12 DR. SMITH: Yes. They would indeed spend, and as I
13 testified this morning, there was three pieces to the Hill
14 analysis. You had for nonfallowing, the economic impacts of
15 those activities. For fallowing you have the economic
16 impacts from reduced agricultural production. And the third
17 piece was the impact on the local economy of those types of
18 expenditures.

19 MS. DOUGLAS: Potentially if the payments to the
20 farmers were high enough, couldn't these payments represent
21 not a loss but an injection of new capital into the farm
22 economy?

23 DR. SMITH: It's a question -- it's related to your
24 earlier conversation. It depends on the terms of the deal.

25 MS. DOUGLAS: It depends on the terms of the deal.

1 I am going to expand our focus. I heard in your
2 earlier testimony, I was here for it, that you are probably
3 very aware of the Palo Verde fallowing program?

4 DR. SMITH: Yes. I don't know very, but I am aware.

5 MS. DOUGLAS: Certainly aware. You've probably written
6 an article. You said you wrote an article about it.

7 DR. SMITH: Right.

8 MS. DOUGLAS: Have you ever seen a draft called
9 Regional Economic Impact to Palo Verde Test Land Fallowing
10 Program which was prepared by either MQ for the Metropolitan
11 Water District of Southern California?

12 DR. SMITH: Yes, I have seen that document.

13 MS. DOUGLAS: Have you read the document?

14 DR. SMITH: Yes.

15 MS. DOUGLAS: Are you fairly familiar with the contents
16 of the document?

17 DR. SMITH: I think so.

18 MS DOUGLAS: I have it here, I apologize I don't have a
19 second copy for you. But in terms of -- on Page 13 the
20 document goes through the use of the payments in excess of
21 fallowing costs in Palo Verde.

22 MR. OSIAS: Is this an exhibit maybe in your materials?

23 MS. DOUGLAS: Can I --

24 MR. OSIAS: We can go get one if we have one.

25 CHAIRMAN BAGGETT: Is it already --

1 MS. DOUGLAS: This is not. Can I have this marked for
2 identification as PCL Exhibit No. 31?

3 MR. OSIAS: So we don't have a copy already?

4 MS. DOUGLAS: No, you don't have a copy.

5 I can walk over and show this to you. But in Table 5
6 on Page 13 of this document goes through what farmers use
7 the money for out of fallowing. Debt repayment was a high
8 one, 37 percent. Farm operation, 42 percent. Farm
9 improvements, 11 percent. Rent, 3 percent.

10 MR. SLATER: Mr. Chair, we have no objection to the
11 questions based upon the study. We would like an
12 opportunity to briefly review what it is that we are talking
13 about, since a copy wasn't provided in advance.

14 MS. DOUGLAS: Would you like to review it now?

15 MR. SLATER: If I could just have a moment to see the
16 nature of the document that the questions are being teed up
17 from.

18 CHAIRMAN BAGGETT: You don't have an extra copy?

19 MS. DOUGLAS: No, I don't have an extra copy. Can I
20 show it to Mr. Slater?

21 CHAIRMAN BAGGETT: If you would, that be --

22 DR. SMITH: If it is material, may I take a peek?

23 MS. DOUGLAS: You're certainly welcome to.

24 MR. SLATER: We have no objections.

25 DR. SMITH: I was just interested in the table, may be

1 more efficient to look at the table.

2 MS. DOUGLAS: The table, it is difficult for me --

3 DR. SMITH: Got it.

4 CHAIRMAN BAGGETT: You will provide all parties with a
5 copy?

6 MS. DOUGLAS: I will provide copies to everybody, multi
7 copies, 13 to the Water Board and one for everybody else.

8 DR. SMITH: There goes another tree.

9 MS. DOUGLAS: 30 percent post consumers recycled paper,
10 not the best, but what can we do.

11 So, I don't want to take the time to recap. I read a
12 number of numbers and fairly high percentage of this money
13 seems to have been reinvested in the farm economy; is that
14 correct?

15 DR. SMITH: That is correct.

16 MS. DOUGLAS: 61 percent here was spent locally. Does
17 that ring true? Would you like to see the document again?

18 DR. SMITH: I certainly trust your ability to read it.

19 MS. DOUGLAS: Thank you.

20 DR. SMITH: Would you like me to comment on those
21 numbers?

22 MS. DOUGLAS: Sure.

23 DR. SMITH: In terms of the -- what I call too many
24 probably would be the high row proportion of money that is
25 spent on debt retirement, that is prediction of a permanent

1 income hypothesis.

2 Now the reason why that is material is that the short
3 term nature of that transaction was a short-lived source of
4 income, which under the permanent income hypothesis suggests
5 that that is not a permanent change but was known as a
6 temporary or transitory change versus a long-term deal where
7 you would look at the implications of a permanent change in
8 income.

9 MS. DOUGLAS: If, for example, the first things
10 somebody might do is pay down debt. Once the debt is paid
11 down, they might invest in the farm. They might take a
12 vacation.

13 DR. SMITH: No. That is not permanent income
14 hypothesis. Permanent income hypothesis -- by the way,
15 Milton Friedman got the Nobel Prize for this. Being a
16 former student of his, I'm bringing back my youth here, of
17 his lecture.

18 MS. DOUGLAS: Can we be really brief on the permanent
19 income hypothesis.

20 DR. SMITH: Well, it is material to the data you
21 provided, if you want to draw our inferences from it.

22 MS. DOUGLAS: I'm interested in your material. If it
23 can be done in 30 seconds or less, I'd really appreciate it.

24 DR. SMITH: Basically, I will give it quicker.
25 Permanent change in income is going to spread over the life

1 of the decision maker, and you are not going to really save
2 a disproportionate amount of that income in any year. A
3 temporary source of income is just the opposite. You
4 actually save a large portion. And debt retirement is
5 indeed a source of savings.

6 So, therefore, it would not -- according to the
7 permanent income hypothesis, to try to reason from the
8 expenditure patterns of a short-term transaction to a
9 long-term transaction, you have to think about these
10 differences.

11 MS. DOUGLAS: Thank you.

12 One thing that I found absent from the analysis or
13 testimony you provided on economic impact, I know this
14 wasn't your focus, was any mention of the Salton Sea. You
15 don't mention the Salton Sea at all in your testimony, do
16 you?

17 DR. SMITH: Right. As I testified and I tried to
18 write, I was asked what was the economic impact on the third
19 parties of a shift.

20 MS. DOUGLAS: Do you understand that recreation in the
21 Salton Sea currently contributes to the local economy?

22 DR. SMITH: I understand that it does in a general
23 sense. I don't have any information on how much.

24 MS. DOUGLAS: On Chapter 3.6, Page 7 of the EIR/EIS,
25 this is in the -- behind the tab recreation.

1 MR. OSIAS: What page?

2 MS. DOUGLAS: Page 7, Chapter 3.6.

3 It says here visitors travel to the Salton Sea
4 year-round for recreational opportunities. So from that we
5 might infer some year-round benefit from recreation at the
6 Salton Sea.

7 DR. SMITH: Correct.

8 MS. DOUGLAS: The EIR/EIS lists a number of activities
9 at and around the Sea. They include bird watching, wildlife
10 observation, camping, hiking, picnicking, hunting, boating,
11 fishing, rental housing during some months of the year and
12 RV camping.

13 All of these activities --

14 DR. SMITH: Where are you reading? I'm focused on the
15 table.

16 MS. DOUGLAS: You're in the economies. I don't focus
17 on tables. On reading the second to last paragraph under
18 the section Salton Sea. Actually the first paragraph under
19 the --

20 DR. SMITH: I got it, got it.

21 MS. DOUGLAS: I have read most of these from there.
22 Then there is another page where rental housing, RV camping
23 are also mentioned.

24 All of these activities would benefit the local
25 economy, right?

1 DR. SMITH: Sure.

2 MS. DOUGLAS: They would all provide some jobs to
3 residents simultaneously?

4 DR. SMITH: Well, first of all these activities exist
5 and are a part of local economy.

6 MS. DOUGLAS: Absolutely. And if the transfer were
7 done in such a way that these recreational opportunities
8 were no longer available, that would harm the local economy,
9 wouldn't it?

10 DR. SMITH: If your question is if the transfer would
11 proceed in a way that reduced the recreational business, if
12 I may be so vague, that indeed that would be an economic
13 impact of said activity.

14 MS. DOUGLAS: Thank you.

15 Are you aware that until the early 1980s visitation of
16 Salton Sea was higher than it was in Yosemite?

17 DR. SMITH: I've heard that spoken orally at quite a
18 few conferences.

19 MS. DOUGLAS: If we go -- let's go back to your
20 testimony, Page 9, Lines 12 and 13. This is where you are
21 talking about the jobs impact to the switch to land
22 fallowing. You say that there would be almost 1,000 short
23 term and over 2,000 jobs long term lost --

24 DR. SMITH: Right.

25 MS. DOUGLAS: -- if the transfer were done through

1 following. Now, your testimony is assuming that the
2 proportional reduction cost, right?

3 DR. SMITH: Actually, that conclusion is based by
4 examining Attachment 10.

5 MS. DOUGLAS: So it doesn't share the assumptions that
6 are used in the EIR/EIS and the other parts of your
7 testimony?

8 DR. SMITH: What I do is my testimony looks, if you
9 will, economists would like to say two scenarios. The first
10 scenario was what the full mix, to use the --

11 MS. DOUGLAS: The full mix, right.

12 DR. SMITH: What are called representative crops
13 because I don't remember what they called them. Then the
14 other, as I noted, that people, some people, argue, believe
15 that if you really target alfalfa. So I have two
16 alternatives outlined here on Attachment 10. And if you
17 look at the last two columns, of Attachment 10, jobs lost
18 from switch to fallowing, all crops versus alfalfa only.
19 The language you cited from my report, is sort of an over
20 summary judgment. I look at the two columns, it is between 1-
21 and 2,000. The range is related in part to time or for
22 that matter to what assumptions you want to make about the
23 fallowing of crops.

24 MS. DOUGLAS: Speaking of assumptions you want to make
25 about the fallowing of crops, would you agree with the

1 statement that to produce alfalfa is about one-twentieth as
2 labor intensive as fruit and vegetable crops?

3 DR. SMITH: What I am doing is trying to go -- I think
4 it is Attachment 8.

5 MS. DOUGLAS: I'll go there, but if you could answer
6 the question.

7 DR. SMITH: I don't know it is one-twentieth. But I
8 certainly agree to the proposition that vegetable crops are
9 from more labor intensive than alfalfa. If we especially
10 look at both the planting, growing and harvesting.

11 I don't know if it is 20 to one or 15 to one, but
12 certainly --

13 MS. DOUGLAS: Because on Page 7 of the new PCL Exhibit
14 31, which I can show you --

15 DR. SMITH: I haven't seen that exhibit.

16 MS. DOUGLAS: You have. That is the one I walked over
17 and showed you, the table.

18 DR. SMITH: I'm sorry, the MQ study.

19 MS. DOUGLAS: Yes.

20 DR. SMITH: Thank you.

21 MS. DOUGLAS: It says here the acre per acre field
22 crops, such as alfalfa, are 20 times less labor intensive
23 than vegetable and fruit crops.

24 DR. SMITH: Okay. One thing, though, that struck me
25 when I looked at that study is that it was based on crop

1 guideline data from Imperial Valley. And the way I read the
2 attachment, I forget the name, the number to that study, was
3 unclear to me whether or not it included the harvesting.

4 MS. DOUGLAS: On Page 12, Lines 9 through 12 of your
5 testimony, you say that the economic losses from fallowing
6 exceed the economic benefits from the current contract
7 payments IID would receive under the proposed agreements
8 with San Diego County Water Authority, Coachella and MWD.

9 That's your testimony; is your opinion, right?

10 DR. SMITH: Yes. What that's based on, if you will, if
11 you look at the economic loss from the reduction of
12 agricultural reduction versus the estimated economic
13 stimulus from the contract payments, the negative is not
14 outweighed by the positive in this analysis.

15 MS. DOUGLAS: You're not including in this conclusion
16 any information about the value, for example, to the economy
17 of the Salton Sea; is that correct?

18 DR. SMITH: That is correct.

19 MS. DOUGLAS: If I could, let me pull out -- this is in
20 the EIR/EIS in the appendix, so in the second big, huge
21 folder, Volume 2, Page G-9.

22 DR. SMITH: That is at the back.

23 Counsel is helping here.

24 We are getting it.

25 MS. DOUGLAS: And Table G-3 on Page G-9 is the assumed

1 price series for the transferred water in 2001 dollars.

2 Do you see that?

3 DR. SMITH: Yes, I do.

4 MS. DOUGLAS: Now, is it your understanding that the
5 transfer gets fully wrapped up so it gets up to basically
6 the full acre-foot amount of the transfer, 200,000
7 acre-feet for San Diego, for example, after ten years? So
8 in 2011; is that your understanding?

9 DR. SMITH: Under my assumptions that transfer is going
10 to start in 2002, that would be true.

11 MS. DOUGLAS: Under all of the assumptions in the
12 EIR/EIS the price calculations in the table and everything
13 else?

14 DR. SMITH: Right.

15 MS. DOUGLAS: So the price per acre then from San Diego
16 is \$339?

17 DR. SMITH: Under those projections, yes.

18 MS. DOUGLAS: So if we multiply that times the 200,000
19 acre-feet we get somewhere around or above \$600,000 a year?

20 DR. SMITH: I'll trust your arithmetic.

21 MS. DOUGLAS: I heard from the entire room \$60,000,000
22 a year.

23 MR. OSIAS: Don't trust her arithmetic.

24 MS. DOUGLAS: You may or may not want to trust my
25 arithmetic. You might trust the entire room.

1 DR. SMITH: Where are you going with the map?

2 MS. DOUGLAS: I'll tell you where I'm going. You'll
3 see very soon. In your experience do you have -- what is
4 the cost of fallowing to a farmer?

5 DR. SMITH: The cost of fallowing to a farmer would be
6 --

7 MS. DOUGLAS: On a per acre basis.

8 DR. SMITH: Right. Would be the foregone income plus
9 any other expenditures that are not variable in their
10 operations.

11 MS. DOUGLAS: What might some of these other
12 expenditures be?

13 DR. SMITH: Again, this is going to depend on the type
14 of program. For example, I know that during the drought
15 water bank when they came along there was an issue of
16 unwinding tenant/landlord. So there was in the policy of
17 DWR at the time, you two go figure out and once you've
18 reached a consent then, indeed, come and be in the program.

19 If IID were to do the same thing, there would be the
20 issue how does landlord tenant relations get sorted out to
21 get consent and to the extent that required any form of
22 financial consideration, it would also be part of the cost
23 of fallowing.

24 MS. DOUGLAS: There are also, I know, other costs to,
25 right, just stuck after that you have to do to maintain the

1 fields, maybe disking or something?

2 DR. SMITH: There will be that, especially and moreover
3 if we think of -- this gets to the term. What do we mean by
4 short-term?

5 MS. DOUGLAS: Can I define it so that we talk about the
6 same thing?

7 DR. SMITH: Sure.

8 MS. DOUGLAS: Let's say, let's talk about a per acre
9 basis the cost of fallowing a field for one year.

10 DR. SMITH: There would be the issue of what also is
11 the obligations related to that program for someone who
12 participates in terms of is there --

13 MS. DOUGLAS: Is there monitoring, cover crops.

14 DR. SMITH: Plus there would be the issue to the extent
15 that if that ground would otherwise be in production as part
16 of what I called the long-term management of that land, to
17 the extent that you are not growing pursuant to that plan,
18 or are there other things you must engage in to enhance the
19 productivity of that land so that when you bring it back in
20 you don't have lower yields.

21 MS. DOUGLAS: Understand.

22 I have in my hand another document, which for purposes
23 of identification, if I could mark as PCL Exhibit 32. This
24 document is entitled The Palo Verde Test Planned Fallowing
25 Program Final Report, prepared by Great Western Research for

1 Met in August 1995.

2 Are you familiar with this document?

3 DR. SMITH: Only through the discussion of this
4 document by the Pacific Institute report a year later.

5 MS. DOUGLAS: You have not yourself read it?

6 DR. SMITH: Did not personally read that
7 document.

8 MS. DOUGLAS: Would anyone -- I don't have extra
9 copies. Would anyone like --

10 MR. SLATER: Would just like to see it.

11 DR. SMITH: I guess there is more than one volume.

12 MS. DOUGLAS: In the Executive Summary on the page
13 that's marked ii of this document, it says that in the Palo
14 Verde experience the total cost over two years, the total
15 weighted average cost for the two-year program for all
16 fallowing treatments, including initial fallowing and all
17 follow-up treatments was \$53.38 per acre.

18 So if we go to our per one-year analysis that we are
19 using now, the cost -- and this is not for profit, this is
20 cost to maintain the fields. We are at \$26.70 per acre per
21 year of cost, using the Palo Verde numbers.

22 Is that correct?

23 DR. SMITH: Yeah.

24 MS. DOUGLAS: So far I have divided by two.

25 DR. SMITH: I think the room agrees.

1 MS. DOUGLAS: I am sure everyone will let me know if
2 they don't.

3 Now, in terms of lost profit for an acre of alfalfa, do
4 you have any idea of what a reasonable number would be?

5 DR. SMITH: Depends on market conditions.

6 MS. DOUGLAS: Is there an average? You follow market
7 prices to some extent, don't you?

8 DR. SMITH: Right.

9 MS. DOUGLAS: Just for the purpose of analysis, is \$35
10 profit per acre reasonable?

11 DR. SMITH: I would have to go back and look at
12 records, to be honest with you. I feel uncomfortable
13 speculating without -- if I had known I'd get this line of
14 questioning, I would have reviewed those records.

15 MS. DOUGLAS: I didn't know until about -- I don't even
16 want to tell you what time last night I decided to ask this
17 question.

18 If we could just hypothetically, giving the benefit of
19 the doubt to use the number 35, which is my number at this
20 point, plus the \$26.70 a year to maintain the land so it is
21 in farming condition, whatever the Palo Verde folks did, we
22 are at approximately \$70 per acre per year cost of
23 fallowing.

24 DR. SMITH: Does that include land rent?

25 MS. DOUGLAS: Does that include what?

1 DR. SMITH: Land rent, my point about the issues of --

2 MS. DOUGLAS: It includes of the costs at Palo Verde
3 plus my estimate on profit per acre of alfalfa.

4 DR. SMITH: Your estimate. Okay. Well, then I will
5 proceed under your estimate.

6 MS. DOUGLAS: You will proceed under my estimate. In
7 the analysis that the amount of acreage that has to be
8 fallowed for the transfer in the worst case scenario in the
9 EIR/EIS, that is -- do you need that document back? I
10 apologize.

11 Chapter 3.5, Page 16, is back to the agricultural
12 section.

13 MR. OSIAS: Get Mr. Slater to turn the pages for us.

14 DR. SMITH: He may be more efficient.

15 Thank you.

16 MS. DOUGLAS: It says here that the worst case
17 scenario fallowing for the whole transfer is 50,000 acres,
18 right?

19 DR. SMITH: That is what it says.

20 MS. DOUGLAS: That is what it says. We know at least
21 there is talk about makeup water for the Salton Sea, and
22 that could get us up even higher, so maybe 75,000 acres with
23 makeup water for the Sea.

24 To try to estimate what the cost of fallowing for a
25 year under this program would be, using, of course, the

1 numbers that I have provided you, would say about \$70 an
2 acre times 75,000 acres, and you get at under \$5,000,000 a
3 year cost of fallowing.

4 DR. SMITH: I think there is from an economist's
5 perspective a flaw in this analysis. And that is under the
6 assumption that you have a transaction.

7 MS. DOUGLAS: What kind of transaction?

8 DR. SMITH: Fallowing transaction.

9 MS. DOUGLAS: That is under the assumption that
10 somebody actually participates in the program?

11 DR. SMITH: Under those terms and conditions that are
12 outlined. What I find interesting about that is that I have
13 to go back to direct to refresh my memory, but in the '92
14 Met fallowing agreement the price was certainly north of
15 \$100. I can't remember if it was 125 or 140. And the
16 proposed agreement, if you deal with the \$3,100.50 up-front
17 payment per acre and the fact that when they pull down the
18 fallowing inside the 550 or 660, I can't recollect the exact
19 annual. I do recall reading a Met staff document that they
20 prepared and presented to their Board where they said that,
21 depending on the frequency, of which they exercised the
22 right to fallow, the cost of water to Met would be anywhere
23 from 150 to over \$200 an acre-foot.

24 MS. DOUGLAS: I think you and I both agree, and tell me
25 if you don't, we both agree that participation in the

1 program would be much higher if payments to farmers are high
2 as opposed to being low; is that a fair assumption? We
3 totally agree on that?

4 DR. SMITH: Right.

5 MS. DOUGLAS: And let me ask this in the form of a
6 question. Then, if the costs of fallowing per year are
7 around \$5,000,000, and the payments come in are around
8 \$60,000,000, is there enough money coming in to create
9 incentives for people who may participate in the program?

10 DR. SMITH: The dilemma you're going to have is that,
11 let's go to the extreme of an earlier question. Let's say
12 we offer it all at this point. By definition it has to be
13 maximum participation, right, whatever that may be, right?
14 However, there is the issue of the impact of that
15 transaction on the third parties.

16 MS. DOUGLAS: Absolutely. There might be something, I
17 mean, left to -- not only might there be money coming in
18 that farmers are reinvesting in the farm economy in
19 Imperial County, but there might also be and probably should
20 be money left over for economic development in the county?

21 DR. SMITH: You've raised two issues. The first issue
22 is that the impact of compensation received by the
23 participant above the cost is part of that third rung that I
24 said was included in the Hill analysis.

25 In terms of your other issue, yes, there might be, and

1 let's do a hypo. Did you say 60,000,000?

2 MS. DOUGLAS: I said 60,000,000.

3 DR. SMITH: Let's say after you pay out 40,000,000 --
4 hypothetically you pay out 40,000,000 both to participants
5 and to deal with the other District costs. So you've got
6 20,000,000.

7 MS. DOUGLAS: Per year?

8 DR. SMITH: Per year.

9 The big question if there is money in, I guess you
10 might do something. As I indicated this morning, one of the
11 difficulties you might be able to do something to mitigate
12 the impacts is what, in fact, do you do to mitigate the
13 impacts and what is the record of how you mitigate the
14 impacts about how effective the mitigation is.

15 For example, to date the ideas are more related to
16 what, well, we can extend employment benefits for 18 months.
17 Yes, you might extend unemployment benefits for 18 months
18 as it relates to the use of the 20,000,000 in that example.

19 MS. DOUGLAS: You might do other things. And I think
20 you and I agree that the question of what you do with that
21 20,000,000 to help the local economy is a very important and
22 open question?

23 DR. SMITH: It is critical to understanding what is the
24 impact.

25 MS. DOUGLAS: I have no further questions.

1 Thank you very much.

2 DR. SMITH: You're welcome.

3 CHAIRMAN BAGGETT: Thank you.

4 Colorado Tribes, Mr. Shepard.

5 MR. SHEPARD: No questions.

6 CHAIRMAN BAGGETT: Mr. Slater.

7 (Court reporter changes paper.)

8 CHAIRMAN BAGGETT: Back on the record.

9 MS. DOUGLAS: I would like to -- I have been requested
10 to read the full titles of these documents into the record.
11 I would like to move to introduce these two documents into
12 evidence, PCL 31 and PCL 32.

13 MR. OSIAS: I object, at least temporarily. I don't
14 mean three or four years. On the basis of, A, we have had
15 at best a glancing review of them. B, without at least an
16 opportunity to read them in full and maybe see how they were
17 used in the case in chief, we don't know for what purpose --
18 we don't know whether they are the kind of document that is
19 reliable enough to meet the relatively low evidentiary
20 threshold here.

21 I would ask until we come back, so we can have a chance
22 to read them.

23 CHAIRMAN BAGGETT: That is reasonable.

24 Do you want to read the title?

25 MS. DOUGLAS: I will read the title into the record,

1 and I will be happy to come back and further authenticate
2 these documents in our case in chief.

3 CHAIRMAN BAGGETT: Mr. Rodegerdts, you had a question?

4 MR. RODEGERDTS: Yes. Since we are about to break at
5 the end of this day for seven or eight days, perhaps in that
6 interim period they could be served on everybody?

7 MS. DOUGLAS: They certainly will.

8 MR. RODEGERDTS: Before they are admitted.

9 CHAIRMAN BAGGETT: I would agree.

10 MS. DOUGLAS: PCL 31, the full title is Regional
11 Economic Impacts of the Palo Verde Test Land Fallowing
12 Program, prepared by MQ for the Metropolitan Water District
13 of Southern California, December 1994.

14 The document marked for identification is PCL 32, is
15 entitled Palo Verde Test Land Fallowing Program, August 1,
16 1992-July 31, 1994, Final Report, Volume 1: Main Report,
17 prepared by Great Western Research for the Metropolitan
18 Water District of Southern California, August 1995.

19 MR. OSIAS: Mr. Chairman, we'd ask, just so the service
20 copies are complete and probably will dispose of any
21 objection, but we would like to see the full report rather
22 than just the first volume.

23 CHAIRMAN BAGGETT: How long is the full report?

24 MS. DOUGLAS: I am just using the first volume, so I
25 don't know why I would --

1 MR. OSIAS: I might cross-examine your witness with the
2 second volume, and you have it and I don't.

3 CHAIRMAN BAGGETT: I would argue she is only entering
4 Volume I, and that is fine with me. If you want to go look
5 at the other volumes, maybe you will want to bring those
6 back. But you will bring them, we'll deal with that when
7 you do your case in chief. Those are the two identified and
8 you will serve copies to all parties.

9 MS. DOUGLAS: As soon as possible.

10 CHAIRMAN BAGGETT: Thank you.

11 Mr. Slater, San Diego.

12 ---oOo---

13 CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

14 BY SAN DIEGO COUNTY WATER AUTHORITY

15 BY MR. SLATER

16 MR. SLATER: Dr. Smith, how are you?

17 DR. SMITH: Fine, and you?

18 MR. SLATER: Okay. If I can I would like to do a
19 little clarification to some of the comments that you had
20 today, some of your written testimony and some of the
21 responses to cross-examination.

22 I would like to start first with the subject of Mendota
23 Study that you referenced in your testimony again in the
24 response to cross.

25 Are you familiar with that study?

1 DR. SMITH: I just looked cursory at it after the Farm
2 Bureau's testimony was submitted. I was interested in what
3 they had to say.

4 MR. SLATER: Are you aware whether that study is a
5 study that focuses on the impacts of water shortage as a
6 result of drought?

7 DR. SMITH: Yes.

8 MR. SLATER: Am I correct that that was not a land
9 management program of any kind; it was a shortage induced by
10 drought, correct?

11 DR. SMITH: Correct.

12 MR. SLATER: You also indicated a reference to some
13 water transfer in Denver that involved between 30 and 40
14 percent of the community water supply, correct?

15 DR. SMITH: Correct.

16 MR. SLATER: Roughly what percentage of IID's water
17 right is being transferred or made available to San Diego
18 under the proposed water transfer agreement?

19 DR. SMITH: None of its water right.

20 MR. SLATER: How much water is being made available
21 under or pursuant to its water right?

22 DR. SMITH: Just parsing the questions. Well, it would
23 be -- if indeed if IID were to quantify it or cap itself at
24 3.1 million acres.

25 MR. SLATER: Please make that assumption.

1 DR. SMITH: It's, what, 200,000 divided by 3.1, which
2 is what, 8 percent or should I get --

3 MR. SLATER: Less than 10 percent is my guess.

4 And if you then combine in as well the proposed QSA
5 transfer to Coachella, the potential maximum, and thereby
6 came up with a cumulative total of the 300,000, which is
7 before this Board on the conservation and transfer program,
8 is it still less than roughly 10 percent of IID's water
9 right?

10 DR. SMITH: Yes, it is.

11 MR. SLATER: You also mentioned some proposed
12 legislation in Colorado, correct?

13 DR. SMITH: Correct.

14 MR. SLATER: That is proposed legislation, correct?

15 DR. SMITH: That is what I called it.

16 MR. SLATER: Mr. Smith, Dr. Smith, sorry, I've done it
17 twice in two days.

18 DR. SMITH: I know.

19 MR. SLATER: I hate when I do that.

20 DR. SMITH: I do, too.

21 MR. SLATER: IID has no existing conservation program
22 on-farm or otherwise, presently, correct?

23 DR. SMITH: What do you mean by no existing
24 conservation program?

25 MR. SLATER: Sorry. They are -- let me back up. Let

1 me lay a foundation for you.

2 Are you familiar with the San Diego/IID Water Transfer
3 Agreement?

4 DR. SMITH: Yes.

5 MR. SLATER: In fact, you advised IID with regard to
6 the negotiation of that agreement, correct?

7 DR. SMITH: Correct.

8 MR. SLATER: That you were one of the principal
9 negotiators, correct?

10 DR. SMITH: I certainly participated in negotiations.

11 MR. SLATER: That agreement calls for agreements
12 between IID and farmers to conserve water, correct?

13 DR. SMITH: Participating landowners I think is the
14 contract term.

15 MR. SLATER: Thank you for the more precise response.
16 Appreciate that.

17 There is presently no program which calls for, for
18 example, pro forma contracts with IID landowners, correct?

19 DR. SMITH: I'm just trying to understand your
20 question. What do you mean, there is no program --

21 MR. SLATER: We will take it in pieces, Doctor.

22 Are there any existing contracts between IID and
23 farmers to implement, farmers and/or landowners, to
24 implement the transfer agreement?

25 DR. SMITH: There are no existing contracts.

1 MR. SLATER: They are proposed or contemplated -- are
2 there proposed or contemplated contracts yet?

3 DR. SMITH: Have not gone to law school, I may not
4 understand the distinction. I think from a common sense
5 point of view I would say contemplated because there is no
6 sort of term sheets that have been approved or no draft
7 contracts.

8 MR. SLATER: When I use the word "pro forma," there is
9 no draft or outline of components of a potential agreement?

10 DR. SMITH: There is numerous outlines of components.

11 MR. SLATER: Is there a favorite approach?

12 DR. SMITH: Not to my knowledge.

13 MR. SLATER: Has there been an adopted approach?

14 DR. SMITH: Not to my knowledge.

15 MR. SLATER: Indeed, isn't it a contingency of the
16 transfer agreement that environmental review must be
17 complete before these contracts are ultimately let between
18 IID and the landowners/farmers?

19 DR. SMITH: That is correct. In my Phase I testimony I
20 think I went into that in far more detail and hopefully that
21 response suffices here.

22 MR. SLATER: The farmers, indeed, have an interest in
23 knowing what the environmental impacts are and potential
24 risk before they were to execute such an agreement?

25 DR. SMITH: Correct.

1 MR. SLATER: Under the proposed transfer agreement will
2 IID be the recipient of the proceeds from the transferee,
3 San Diego, or will the payment go directly to the landowners?

4 DR. SMITH: The payments go directly to the District.

5 MR. SLATER: Has IID reserved discretion on how to
6 distribute the revenue?

7 DR. SMITH: Yes, they have.

8 MR. SLATER: Dr. Smith, the EIR, is it fair to say that
9 the EIR has identified, among other things, that there may
10 be impacts on the Salton Sea, may be impacts on the Salton
11 Sea, as a result of pursuing the transfer agreement?

12 DR. SMITH: I have not reviewed those portions of the
13 EIR/EIS. I can't opine.

14 MR. SLATER: But you would agree that the EIR has
15 identified that if Alternative 4 is pursued, the following
16 alternative, that there would be significant socioeconomic
17 losses within Imperial?

18 DR. SMITH: Yes.

19 MR. SLATER: But do you agree that the magnitude of
20 those socioeconomic impacts are dependent on the number of
21 variables in the following program, correct?

22 DR. SMITH: Just thinking of the number of variables.
23 Could you help me? What did you have in mind?

24 MR. SLATER: Sure. Are the magnitude of losses,
25 economic losses, dependent on variables that are included in

1 the program? Or to use your words, does it depend on the
2 terms of the deal?

3 DR. SMITH: Yes, it will.

4 MR. SLATER: And things that might be important,
5 listening to your testimony, include the length of the
6 program?

7 DR. SMITH: Correct.

8 MR. SLATER: And again, to define it, permanent or
9 rotational, when I say rotational, for a period not to
10 exceed one year?

11 DR. SMITH: Try that one.

12 MR. SLATER: If it was rotational for a period of up to
13 one year for participation, not to exceed a year, would that
14 affect the outcome?

15 DR. SMITH: I am trying to understand the question. I
16 am trying to understand the language. You are talking about
17 the agreement of participants would be one year?

18 MR. SLATER: Or less.

19 DR. SMITH: One year or less.

20 MR. SLATER: Let's assume a defined period of one year.

21 DR. SMITH: The term of the agreement?

22 MR. SLATER: It would be length of time that the
23 landowner would be obliged to keep the land fallow.

24 DR. SMITH: And at the end of that, just being sure we
25 are communicating. My answer may be shorter than my own

1 questions. Is that at the end of that year the landowner
2 would not be further obligated to participate, and
3 District, I guess, would round them up next year?

4 MR. SLATER: That's correct.

5 DR. SMITH: Yeah, that would be a material issue.

6 MR. SLATER: And would the type of crop that is
7 targeted for engaging in the fallowing program matter?

8 DR. SMITH: Yes, it would.

9 MR. SLATER: To use an example that you referenced in
10 your testimony, alfalfa, for example, versus lettuce or
11 onions?

12 DR. SMITH: Versus the full mix. I think I concluded
13 that has a material bearing.

14 MR. SLATER: That affects both the farmer directly and
15 affects the labor issue as well?

16 DR. SMITH: The impacts, the economic impacts on third
17 parties, yes, it does.

18 MR. SLATER: And I also think I understood your
19 testimony on response to some of the questions on cross that
20 soils included in the program and productivity might also be
21 important?

22 DR. SMITH: Yes. And issues related to the impact of
23 the fallowing program on productivity of soils and cost of
24 mitigating those impacts were outside the scope of my
25 analysis.

1 MR. SLATER: And there was also response on cross to a
2 question related to a previous question about Mr. Cox and
3 profit margins and -- narrow this if I can.

4 As I understood it and I understood the testimony in
5 the EIR, that it is prudent and reasonable for a farmer to
6 have their land lie fallow or idle for some period of time
7 within their normal operation, correct?

8 DR. SMITH: Are you talking about the EIR or my own
9 knowledge?

10 MR. SLATER: Let's start with your own knowledge.

11 DR. SMITH: My own knowledge is as again as I look at
12 the sample of profit histories that I referred before, we do
13 see evidence that there may be a period of months between
14 the harvesting of one crop and the planting of another.

15 MR. SLATER: And there may be beneficial impacts to the
16 soil to do that?

17 DR. SMITH: Right.

18 MR. SLATER: Another variable -- Strike that.

19 Is it true that where the payment from the District was
20 directed would also have an impact, for example, whether it
21 went to the landowner or the farmer?

22 DR. SMITH: That can have a bearing.

23 MR. SLATER: Especially if a lot of landowners are
24 absentee?

25 DR. SMITH: Correct.

1 MR. SLATER: Dr. Smith, you're an experienced
2 consultant. You've published in the field and you've worked
3 on complex negotiations, correct?

4 DR. SMITH: Yes.

5 MR. SLATER: It is not your testimony that a program --
6 Strike that.

7 It's not your testimony that it is impossible to
8 develop a land management program that includes fallowing as
9 a component that would result in fewer or lesser impacts for
10 the community than are evidenced in your testimony for this
11 proceeding?

12 DR. SMITH: May I ask you to rephrase, but don't do it
13 double negative?

14 MR. SLATER: Be happy to.

15 DR. SMITH: Thank you.

16 MR. SLATER: Sorry about that.

17 Is it true that a program could be developed taking
18 into account the variables that we just went through to
19 minimize socioeconomic impacts in a fallowing program.

20 DR. SMITH: To minimize.

21 MR. SLATER: To minimize. Is it true?

22 DR. SMITH: On what scope of program for fallowing? I
23 just want to know, what is the whole constant, for the full
24 300,000?

25 MR. SLATER: We'll use a constant. Let's start with --

1 assume for a second 300,000 acre-feet is going to be
2 conserved. Let's start with, is it possible to develop a
3 land management program which takes into account fallowing
4 as a method of conservation and in consideration of the
5 variables that we just went through to minimize impacts,
6 socioeconomic impacts, on the community?

7 DR. SMITH: I just want to be sure. When you say role
8 for fallowing, is it for the full 300,000 or a portion?

9 MR. SLATER: Let's start with a portion.

10 DR. SMITH: What portion?

11 MR. SLATER: Let's start with half, 150,000.

12 DR. SMITH: I'm certainly skeptical.

13 MR. SLATER: So it's your opinion that a program --
14 sorry, misstates your testimony. You're skeptical that a
15 program that included 150,000 acre-feet of fallowing, even
16 for managing all the variables, could minimize socioeconomic
17 impacts?

18 DR. SMITH: Well, actually the use of the word
19 "minimizing" is also a very vague standard. I mean,
20 minimizing could mean we minimize it so it is only 90
21 percent of what's estimated here? Is that minimum?

22 MR. SLATER: Would it be less than what you testified
23 to?

24 DR. SMITH: Could be -- certainly, it could be less.
25 Certainly, 150,000 only would be less than 300-.

1 MR. SLATER: Now moving to the example of 300,000 and
2 employing all the variable factors and trying to design a
3 program which was shorter in duration, would that affect the
4 outcome?

5 DR. SMITH: Actually, it would, but in a very complex
6 dimension. The difficulty is I think there is more factors
7 to it than is suggested by your earlier question.

8 MR. SLATER: All things being equal, assume that the
9 fallowing program was for ten years in its entirety as
10 opposed to the duration of 75 years, would you expect the
11 impacts to be less?

12 DR. SMITH: Is that supported under a ten-year
13 contract, just how long?

14 MR. SLATER: I'm just saying all things being equal,
15 you design the deal.

16 DR. SMITH: Certainly, a shorter term fallowing deal
17 would have less of an adverse economic impact deal than that
18 longer term deal.

19 MR. SLATER: A fallowing program which was shorter in
20 duration and included eligibility only for alfalfa would
21 likely result in less socioeconomic damages than testified
22 to, in your opinion?

23 DR. SMITH: I actually gave estimates based on alfalfa
24 only, so I am puzzled by that question. We can go to
25 attachment whatever.

1 MR. SLATER: Let me try again. It is your testimony,
2 is it not, that the inclusion of alfalfa, all things being
3 equal, in a fallowing program as opposed to other crops,
4 such as lettuce and onions, would have an impact on
5 socioeconomic impacts associated with the fallowing program,
6 correct?

7 DR. SMITH: Yes, that is my written testimony.

8 MR. SLATER: It is true, isn't it, that in a short-term
9 fallowing program that included alfalfa or required alfalfa
10 -- land that was previously in alfalfa to be eligible, that
11 there would be less socioeconomic impacts, correct?

12 MR. OSIAS: Objection. Ambiguous. Less than what?

13 MR. SLATER: Less than testified to in your testimony.

14 DR. SMITH: Would you restate the question?

15 MR. SLATER: Does fallowing, a short-term fallowing
16 program that uses alfalfa as opposed to other crops, such as
17 onions and lettuce, does that program have a higher
18 likelihood of not causing the level of socioeconomic impacts
19 that are identified in your testimony?

20 DR. SMITH: I guess my puzzlement is I identified the
21 impacts, and that it is part of the range of the study. So
22 that is my puzzlement about the question.

23 I have estimated impacts for situations, if you can --
24 if you were to assume -- I think this is what you are
25 getting to. If you were to assume you could successfully

1 target only alfalfa, those would be in the lower range.
2 That is in my testimony. But you are asking me a question
3 that is outside my testimony, no, that is part of my
4 testimony.

5 MR. SLATER: I guess I am asking you to assume that you
6 can target?

7 DR. SMITH: That's right. In which case you would look
8 at different parts of the attachments.

9 MR. SLATER: So the answer is yes?

10 DR. SMITH: Well, no. I think the answer is no because
11 you said outside the amount claimed or estimated in my
12 study, when what I am saying is I estimated in my
13 testimony.

14 MR. SLATER: Your response then is you're confirming
15 that is, in fact, lower?

16 DR. SMITH: It is lower as I illustrate in my study.

17 MR. SLATER: As you previously testified?

18 DR. SMITH: Right. What I am getting at is it is not
19 outside my study. It is within the estimates and range of
20 estimates in my study.

21 MR. SLATER: And if we took -- we were to design a
22 short-term fallowing program that was predictable so that a
23 farmer would know with some certainty when they would be
24 eligible to participate, would that have an affect on
25 reducing the potential socioeconomic impacts below those

1 identified in your testimony?

2 DR. SMITH: I guess we are still not communicating
3 here. Let me try to answer in this way: I have ranges of
4 estimated socioeconomic impacts from shift to land
5 fallowing. Assumption one, the full crop mix. Assumption
6 two, alfalfa only. Those range of estimates are in my
7 testimony.

8 You keep talking about if we do alfalfa. Only somehow
9 I hear language it is outside. It is within my range.

10 MR. SLATER: I'm sorry, I am talking about
11 predictability of a program.

12 DR. SMITH: Right. Okay.

13 I understood your testimony on cross to be that
14 predictability of a program is material?

15 DR. SMITH: Right.

16 MR. SLATER: And I am asking that if the program is
17 predictable, has an element of predictability, farmer knows
18 when they can participate, opt in and opt out. Does that
19 have an impact on the socioeconomic consequences?

20 DR. SMITH: Yes. Allow me to explain in the following
21 way. I've got ranges here --

22 CHAIRMAN BAGGETT: Can you move closer to the mike?

23 DR. SMITH: I have ranges here based on, let's say,
24 alternative assumptions with which crops are fallowed and
25 the factors that you are talking about may influence where

1 within those boundaries you will be. So to the extent that
2 you had greater predictability or some other factors, you
3 are more likely to move towards one end of the range as
4 opposed to the other. I'm sorry to be hard-headed.

5 MR. SLATER: I appreciate that. I am getting a lesson.

6 Thank you.

7 I want to -- just one more question. In designing a
8 program, would it also be important if the farmer had the
9 flexibility to opt out?

10 DR. SMITH: I would fully be confident in the following
11 statement: That if Program A had a set of terms and
12 conditions which do not include opt out versus Program B
13 included a set of terms plus an opt out, that would probably
14 be more attractive to a farmer.

15 MR. SLATER: Dr. Smith, you have never been retained by
16 IID to develop a fallowing only land management program,
17 correct?

18 MR. OSIAS: Just a minute. Objection. To the extent
19 any employment by IID, which employment includes a
20 description of the subject matter of employment, comes
21 through counsel, I object on the grounds of attorney-client
22 privilege.

23 CHAIRMAN BAGGETT: Sustained.

24 MR. OSIAS: Allow him to answer for anything outside of
25 anything that has come through counsel.

1 DR. SMITH: All my employment is through the attorney.

2 MR. SLATER: Are you employed by a public agency?

3 DR. SMITH: Am I employed -- actually, I'm probably an
4 independent contractor. You are not going there, are you?

5 MR. SLATER: Have you prepared a draft and distributed
6 a draft, have you prepared and distributed a draft of a
7 proposed fallowing program for the Imperial Irrigation
8 District?

9 MR. OSIAS: Let me just seek clarity so I can avoid
10 objecting. Do you mean distributed to other than to, say,
11 counsel?

12 MR. SLATER: Other than counsel.

13 MR. OSIAS: In a closed session.

14 DR. SMITH: No, I haven't.

15 MR. SLATER: I thank you.

16 I have no further questions.

17 Thank you.

18 CHAIRMAN BAGGETT: Thank you.

19 I was going to ask for a discussion of permanent income
20 hypotheses, but I think --

21 MR. OSIAS: Probably right below the Pythagorean
22 Theorem.

23 DR. SMITH: It's a neat graph.

24 CHAIRMAN BAGGETT: I think I would get more than a few
25 comments from the people.

1 Richard?

2 Anybody else here? Andy? Tom? Dana?

3 Maybe on the redirect you can ask for further
4 clarification.

5 MR. OSIAS: I actually have some redirect.

6 CHAIRMAN BAGGETT: Let's take five, six minutes to get
7 back here for redirect.

8 (Break taken.)

9 CHAIRMAN BAGGETT: Back on the record.

10 ---oOo---

11 REDIRECT EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

12 BY MR. OSIAS

13 MR. OSIAS: Dr. Smith, let me ask you some clarifying
14 questions regarding the cross that you just endured.

15 Let me give you perhaps a more complete
16 hypothetical than some of the people who were asking you
17 questions.

18 Assume that IID commits to supply transferred water for
19 a minimum of 30 years and up to 75.

20 DR. SMITH: Okay.

21 MR. OSIAS: Assume also, under these hypotheticals that
22 were being given to you, that IID agrees to produce that
23 water by fallowing in order to mitigate impacts to
24 endangered species and has in its endangered species take
25 permits the obligation to produce water for the Sea.

1 DR. SMITH: By fallowing?

2 MR. OSIAS: By fallowing.

3 You have those obligations in mind?

4 Transfer water, it's got to mitigate. Same term, by
5 the way, for the take permit condition, minimum of 30 to
6 75.

7 DR. SMITH: Does IID receive payment for the water that
8 is part of the mitigation?

9 MR. OSIAS: I am not asking you about that.

10 DR. SMITH: I'm just asking about the hypo.

11 MR. OSIAS: I don't know yet.

12 Assume IID goes out into the marketplace, as some have
13 suggested, to ask farmers to participate and to commit to
14 participate for one year.

15 DR. SMITH: As i understand Mr. Slater's scenario, that
16 was the one.

17 MR. OSIAS: Do you have my hypothetical in mind?

18 DR. SMITH: Yes.

19 MR. OSIAS: So far, right?

20 DR. SMITH: Right.

21 MR. OSIAS: Assume they offer to pay them some amount
22 of money so you get one year of participation.

23 DR. SMITH: Okay. I'm following you.

24 MR. OSIAS: Now, the impact, socioeconomic impact, of
25 that one year would be at the low end of the scale in your

1 report, correct?

2 DR. SMITH: Not necessarily. It depends on the crops
3 that are fallowed.

4 MR. OSIAS: Is it possible that one year of fallowing
5 could produce at the most -- explain that. I don't
6 understand that even.

7 DR. SMITH: Well, I guess you could be sure that you
8 fallowed alfalfa land if you went to a parcel that was in
9 alfalfa and didn't irrigate it.

10 MR. OSIAS: Since you only had a one-year commitment,
11 you could find that land?

12 DR. SMITH: Right. I guess so, therefore, your hypo is
13 assuming that you're only limiting your one year to people
14 who have alfalfa currently planned. The difficulty is that
15 I have testified is that what is grown next year will depend
16 on where this natural rotation is. So there might be some
17 that would have otherwise gone to alfalfa or not.

18 MR. OSIAS: Don't get ahead of me. I didn't talk about
19 rotation. You have a one-year commitment to fallowing from
20 the farmers who sign up only. But have a 29- to 75-year
21 commitment to Fish and Wildlife Service and your contracting
22 transferee.

23 DR. SMITH: Right.

24 MR. OSIAS: Is there economic risk to Imperial from
25 such an arrangement besides socioeconomic impacts?

1 DR. SMITH: I guess that would be significant and,
2 probably hate to use huge, but if you are saying that you
3 want to cover a 30-year to 75-year fixed contractual
4 obligation on the one-year rolling --

5 MR. OSIAS: I suggest low.

6 UNIDENTIFIED SPEAKER: In the sense that you mean by
7 rolling.

8 DR. SMITH: Rolling in the sense that, well, you know,
9 we'll see who signs up this year and sweat we get the
10 quantity. And next year I guess we'll go try it again.
11 That is what I mean, it is a mismatch, much akin to
12 mismatches between terms of assets and liabilities that is
13 probably most notoriously known for the cause of the demise
14 of the S&L industry. You have a mismatch of maturities.

15 So if you had one transfer agreement, that would be
16 different.

17 MR. OSIAS: Hang on. Don't get ahead of me.

18 If the District were to find itself soliciting in your
19 year one people to participate only for one year, after it
20 had made long-term commitments to supply water in fashion,
21 it would need, as an economist, to reserve a certain amount
22 of money to cover this exposure for the mismatch; is that
23 right?

24 DR. SMITH: It would have to have some sort, some of
25 way to cover that exposure, right.

1 MR. OSIAS: Might it reserve almost all of the money to
2 do that?

3 DR. SMITH: I haven't really given that a lot of
4 thought. Certainly, you would need a very large reserve
5 fund to underwrite your intended liability.

6 MR. OSIAS: In year two, at least as an economist,
7 assuming you have an educated farmer group, would they know
8 you were obligated to go round them up?

9 DR. SMITH: I suspect they would. In fact, they may
10 figure that out in year one.

11 MR. OSIAS: And they would know you had no choice but
12 to round them up because of the commitments you made to Fish
13 and Wildlife Service and the transferee, right?

14 DR. SMITH: I suspect that they would be aware of that.

15 MR. OSIAS: Would that affect the bargaining leverage
16 for the roundup, as you call it, in year two?

17 DR. SMITH: It would certainly influence probably
18 people's price expectations and, therefore, would influence
19 their willingness to enter into agreements.

20 MR. OSIAS: And would that hypothetical setting have
21 anything in common with the two-year test program that PVID
22 ran?

23 DR. SMITH: Would that --

24 MR. OSIAS: In other words, here you are second year.
25 You have this long-term commitment. Your farm community

1 knows it.

2 DR. SMITH: It is my understanding, based on materials
3 I have read, that while Met has not finalized their -- what
4 do they call their fallowing program, land management?

5 MR. OSIAS: I asked you about the two-year PVID
6 program. I just gave you a hypo.

7 DR. SMITH: You mean the one in the early '90s?

8 MR. OSIAS: Yes.

9 DR. SMITH: Yeah. The term of that agreement was --
10 landowners term agreement was coincident with the District's
11 obligation to Met.

12 MR. ROSSMANN: That probably made a difference in the
13 economic negotiation. As an economist would assume that?

14 DR. SMITH: I would suspect that did, yeah.

15 MR. OSIAS: I gave you sort of a hypothetical with
16 assumptions, but to date has anyone suggested to you or have
17 you seen anything published of how you would marry a
18 short-term farmer commitment to a long-term endangered
19 species or transferee commitment?

20 DR. SMITH: I've seen nothing written where someone's
21 tried coherently to bridge that gap.

22 MR. OSIAS: Without bridging it, there is a big risk?

23 DR. SMITH: There is a big risk. In fact, it
24 undercuts, I think, another premises of the whole San Diego
25 transaction that I testified in Phase I. Where we talked

1 about the importance of getting broad based participation,
2 but it was going to be voluntary. For a nonparticipant I
3 would have to spend more time thinking about what the
4 indemnification agreement would be.

5 MR. OSIAS: Now, you had a series of questions from
6 counsel for Planning and Conservation League on the costs of
7 fallowing to a farmer per acre. You remember that?

8 DR. SMITH: Right.

9 MR. OSIAS: Starting with that hypothetical, I think
10 she said for one year, at least my questions, let's pretend.
11 First of all, this risk exposure of a mismatch is not a
12 direct cost to the farmer, correct?

13 DR. SMITH: Certainly outside those calculations.

14 MR. OSIAS: And you mentioned that there was foregone
15 income plus all nonvariable expenditures would be cost to a
16 farmer, right?

17 DR. SMITH: Right.

18 MR. OSIAS: You mentioned unwinding tenant
19 relationships?

20 DR. SMITH: Right.

21 MR. OSIAS: Would there be or could there be costs
22 associated with preserving the productivity of the field?

23 DR. SMITH: Yes.

24 MR. OSIAS: Could there be fixed costs like water
25 availability charge?

1 DR. SMITH: Yes. In IID there is certainly water
2 availability charge.

3 MR. OSIAS: In fact, it is not could. There would be?

4 DR. SMITH: Yeah.

5 MR. OSIAS: You don't get out of that by not farming?

6 DR. SMITH: It depends on the Board's policy, doesn't
7 it?

8 MR. OSIAS: What is the current policy?

9 DR. SMITH: Right now you pay the availability charge
10 whether or not you farm.

11 MR. OSIAS: Could there be costs for controlling weeds
12 and pests even on the fallowed lands so they don't injure
13 the nonfallowed lands?

14 DR. SMITH: Yes.

15 MR. OSIAS: When Mike Cox was here, who we heard in the
16 cross, his testimony is important, he suggested there may
17 also be costs associated with trying to capture capital
18 investments on a smaller farming operation.

19 Do you understand what I mean by that?

20 DR. SMITH: I think I do.

21 MR. OSIAS: Do you agree with that?

22 DR. SMITH: That would be the part of the fixed
23 obligations that didn't vary with fallowing your land.

24 MR. OSIAS: Give me an example of that.

25 DR. SMITH: I guess Imperial Valley Bank or Farm Credit

1 Services, major lenders in the valley, would probably be
2 still wanting to get paid.

3 MR. OSIAS: You would have -- you would have both
4 fallowing revenue and farming revenue to do that?

5 DR. SMITH: Right.

6 MR. OSIAS: What about -- assume you were only paid
7 your net revenue on the fallowed land, and you had equipment
8 that you formerly used on a hundred acres and now you can
9 use it on 70 acres.

10 DR. SMITH: Sure. Right. Then indeed there would be a
11 decline in the utilization of those equipment, and that
12 would reduce the return from that investment, which would be
13 outside the scope of these estimates.

14 MR. OSIAS: That extra cost would be borne by the
15 nonfallowed land?

16 DR. SMITH: Yeah.

17 MR. OSIAS: And he also mentioned economies scale. I
18 don't want a treatise on the economies of scale. You are
19 familiar with that?

20 DR. SMITH: Yes.

21 MR. OSIAS: That is a common economic analysis
22 provision, correct?

23 DR. SMITH: Yes.

24 MR. OSIAS: Are you familiar with the economies of
25 scale by farmers in Imperial Valley?

1 DR. SMITH: I haven't really focused on that, to be
2 honest with you.

3 MR. OSIAS: You did note in your tailwater return
4 system study that there is some -- maybe I am double
5 counting there -- but some economies of scale to a larger
6 field in terms of operating a pump back system?

7 DR. SMITH: Yes that's true. In terms of conservation
8 device.

9 MR. OSIAS: If you had an irrigator in your employ who
10 could supervise irrigation on a hundred acres and now you
11 were only farming 80, you'd lose the economy of his wider
12 service availability?

13 DR. SMITH: Right.

14 MR. OSIAS: Those kind of costs would be there for
15 fallowing?

16 DR. SMITH: Yes.

17 MR. OSIAS: Are there others that I haven't mentioned
18 to the farmer that you can think of?

19 DR. SMITH: Not offhand. But, I mean, I haven't really
20 sat and prepared a written list, nothing to check off.

21 MR. OSIAS: In her questioning she also told you to
22 assume a two-year number, then she divided it in half and
23 asked you if her arithmetic were correct. You were nice to
24 say yes.

25 Is it automatic that all costs can be prorated evenly

1 over the number of years?

2 DR. SMITH: No.

3 MR. OSIAS: Are some more front-loaded?

4 DR. SMITH: Right. Front-loading obviously carries the
5 cost of the financing.

6 MR. OSIAS: Or tile drains or things like that?

7 DR. SMITH: Right.

8 MR. OSIAS: So in doing a cost of fallowing analysis,
9 you have to look at far more than a few things to figure out
10 the cost to the farmer?

11 DR. SMITH: Right.

12 MR. OSIAS: Is there a risk to fallowing? Do you know?

13 DR. SMITH: Yes. And is related to the term of the
14 fallowing. Certainly if you get out beyond a year, for
15 example, and it could be even shorter than that. I
16 certainly have heard of instances where you have salinity
17 control problems.

18 MR. OSIAS: I want to make sure I understood this
19 part. If you fallowed 10,000 acres, the same 10,000 acres,
20 for 75 years or changed the location of that 10,000 acres
21 every ten years, is there a socioeconomic difference between
22 those two things?

23 DR. SMITH: Not in terms of the economic models. It's
24 just not -- that just doesn't drive at all the
25 analysis.

1 MS. OSIAS: If you created 300,000 acres, acre-feet of
2 water, in one year from one set of property and every year
3 tried to move it around, same answer?

4 DR. SMITH: The models will not capture the
5 difference.

6 MR. OSIAS: Can you discuss the difference?

7 DR. SMITH: Sure. I mean, think of the transaction
8 costs associated with what would be the equivalent, I guess,
9 of musical chairs, where these people are in this year and
10 go around get these. You have people renegotiating their
11 tenant-landowner relationships as well as reconfiguring
12 their operations.

13 So as a practical matter, and I know I have been
14 hearing a lot of hypothetical today, but I'm going to tiptoe
15 towards the practical matter here, is that there is a lot of
16 other business considerations that would be related to how
17 there would be differences in your hypo, hypothetical.

18 MR. OSIAS: You're talking about real things, like
19 transaction costs?

20 DR. SMITH: Transactions cost; reorganizations cost.

21 MR. OSIAS: You heard someone ask, I can't remember
22 who, about fallowing just for the period that the land would
23 normally be idle between crops. You remember that?

24 DR. SMITH: Yes.

25 MR. OSIAS: And as you admit in your exhibit, which has

1 a rotation, as periods where land is left idle for
2 productivity purposes, right?

3 DR. SMITH: Right.

4 MR. OSIAS: If you paid people to continue that
5 fallowing, do you produce any new water?

6 DR. SMITH: Certainly not for the period that it
7 otherwise would not have been in production. So it would
8 only be knocking out the crops that would have been in the
9 cycle after the temporary period of idleness.

10 MR. OSIAS: So fallowing to create water has to, by
11 definition, involve more than the ordinary fallowing that is
12 done for productivity?

13 DR. SMITH: That's correct.

14 MR. OSIAS: Otherwise you create no water?

15 DR. SMITH: Correct.

16 MR. OSIAS: Thank you.

17 CHAIRMAN BAGGETT: Mr. Gilbert, based on the nexus.

18 MR. GILBERT: I think so.

19 CHAIRMAN BAGGETT: Based on those short hypotheticals
20 which were just raised by Mr. Osias, do you have any recross
21 on that?

22 ---oOo---

23 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

24 BY MR. GILBERT

25 MR. GILBERT: There were some questions about

1 contracting with the farmer not to grow a specific crop,
2 such as alfalfa I think was mentioned a number of times?

3 DR. SMITH: Right.

4 MR. GILBERT: Would you anticipate that maybe if that
5 contract were offered there would be a lot of farmers that
6 would figure out how not to grow alfalfa?

7 DR. SMITH: I am sorry, help me again. If a contract
8 is offered which says don't grow alfalfa?

9 MR. GILBERT: Yes.

10 DR. SMITH: Especially if we tie it to a particular
11 parcel of land, there is people probably who could figure
12 out how not to grow alfalfa on those parcels of land.

13 MR. GILBERT: They would be inventive enough to do that?

14 DR. SMITH: Especially if we are doing one out of eight
15 years.

16 MR. GILBERT: That is all I have.

17 CHAIRMAN BAGGETT: Thank you.

18 Mr. Du Bois.

19 ---oOo---

20 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

21 BY MR. DU BOIS:

22 MR. DU BOIS: To continue that line of thought. Would
23 those contracts probably require that farmer not to grow
24 alfalfa anywhere?

25 DR. SMITH: I don't know. You have to ask the people

1 who did the hypothetical. I mean, it seems to me that under
2 the terms of their hypotheticals they were specific to
3 parcels and didn't at all anticipate your question.

4 MR. DU BOIS: So any farmer that wanted to grow alfalfa
5 would simply lease another piece of land or grow it
6 elsewhere?

7 DR. SMITH: That would be part of contractual design,
8 terms and conditions and whatnot. And following I think in
9 reality looked much easier than -- excuse me. Following in
10 reality is much harder than talking about it in a hearing
11 room.

12 MR. DU BOIS: Particularly in Imperial County or
13 Imperial Valley or Irrigation District which is now
14 interested in promoting dairies moving into the community
15 and the dairies depend entirely on alfalfa, nearly entirely.
16 And this would not be a welcomed program, would it?

17 DR. SMITH: I think if indeed -- I know, for example,
18 Ed Macrue [phonetic] has a new dairy, trying to promote
19 dairies in, by the way, not in currently irrigated lands,
20 but other lands. But certainly to the extent there is a
21 creation of a dairy industry, there will be a new market for
22 alfalfa, and as the scope of the local dairy industry grows,
23 the scope for this targeted alfalfa program will shrink.

24 MR. DU BOIS: I have a question to ask you also
25 regarding following. That is, you listed a few reasons that

1 a landowner would have expenses involved in deciding whether
2 to fallow ground or not. But I didn't hear a litany of all
3 of the expenses that might occur.

4 Would you consider that it would be possible that in
5 addition to economy of scale, which you did cover, I think
6 quite well, that a farmer would be or landowner would be
7 subject to enforcement of dust penalties in case the land
8 were dried up?

9 DR. SMITH: Sure. In other words, it may be beyond the
10 scope of ground cover that was encountered in Palo Verde
11 because air quality regulations.

12 MR. DU BOIS: Had ground cover and it turned out to be
13 weeds, noxious weeds, took over, he would be forced to
14 eliminate them?

15 DR. SMITH: I would imagine so. In fact, if I may
16 indicate the fact that I just mentioned a few, reflects the
17 fact I am not a farmer.

18 MR. DU BOIS: Yes, I was going to ask the same
19 questions about rodents and about endangered species taking
20 possession of your property and then what can you do with it
21 after that.

22 DR. SMITH: I have no operational experience. I fully
23 anticipate, by the way, anyone who's offered this
24 hypothetical transaction will bring all these considerations
25 into account when they come to their own economic judgment

1 of whether or not they -- they'll take quite frankly the
2 nickels that are being contemplated as a satisfactory
3 transaction.

4 MR. DU BOIS: It would be logical for a landowner to
5 ask a great deal more than lease payments for ground that
6 was to be simply set aside, fallowed, than if it were
7 farmed?

8 DR. SMITH: Absolutely. I know that not only current,
9 but future environmental liabilities, current and future
10 exposure to endangered species. All that are material
11 issues for landowners.

12 MR. DU BOIS: You are, as an economist, certainly aware
13 that there are times when agriculture is profitable and
14 there are times when not very many farmers are making any
15 money?

16 DR. SMITH: Right.

17 MR. DU BOIS: In the case if the District chose the
18 path of short-term contracts for fallowing and a period of
19 profit making possibilities increased, what would happen to
20 the prices that the landowners would ask?

21 DR. SMITH: The participants -- the price that they
22 will find satisfactory will certainly vary with those
23 conditions. In fact, it is instructive that the
24 Metropolitan two-year program, not the land management, but
25 the two-year fallowing in the early '90s happened to

1 coincide with the low in alfalfa prices and the white fly
2 infestation which interfered with vegetable production.

3 And, indeed, if you can target in short time periods,
4 then in those circumstances I'm sure will be material. But,
5 again, when you think over the longer term, you are
6 absolutely right. There will be years where prices may look
7 lower than other years.

8 MR. DU BOIS: Thank you very much.

9 CHAIRMAN BAGGETT: Mr. Rodegerdts.

10 MR. RODEGERDTS: I pass.

11 CHAIRMAN BAGGETT: Mr. Rossmann.

12 MR. ROSSMANN: No questions, your Honor.

13 CHAIRMAN BAGGETT: Defenders.

14 National Wildlife.

15 Audubon.

16 MR. YATES: No questions.

17 CHAIRMAN BAGGETT: Sierra Club is not here.

18 PCL.

19 MS. DOUGLAS: One question.

20 ---oOo---

21 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

22 BY PLANNING AND CONSERVATION LEAGUE

23 BY MS. DOUGLAS

24 MS. DOUGLAS: Would I have flexibility to design a
25 following program in whatever way made the most sense to the

1 District and the District farmers?

2 DR. SMITH: IID -- excuse me. Under --

3 MS. DOUGLAS: Under the transfer agreement?

4 DR. SMITH: Well, it is pretty hard to have flexibility
5 under the San Diego transaction because it has a no
6 following provision.

7 MS. DOUGLAS: Absolutely true.

8 Suppose that magically disappears. I hate to ask you
9 to assume something that -- but assume that that provision
10 magically disappeared, would IID be able to design a
11 following program in a way that made the most sense to them?

12 DR. SMITH: I don't know. It all depends on -- what
13 you're speculating on is something magically disappearing.
14 And the question is what would the deal look like then.

15 MS. DOUGLAS: Thank you.

16 CHAIRMAN BAGGETT: Mr. Kirk.

17 MR. KIRK: No.

18 CHAIRMAN BAGGETT: Colorado River Tribes.

19 MR. SHEPARD: Waive.

20 CHAIRMAN BAGGETT: San Diego.

21 ----oOo----

22 RE-CROSS-EXAMINATION OF IMPERIAL IRRIGATION DISTRICT

23 BY SAN DIEGO COUNTY WATER AUTHORITY

24 BY MR. SLATER

25 MR. SLATER: Let's see if we can be brief.

1 CHAIRMAN BAGGETT: It's your witnesses that are
2 waiting.

3 MR. SLATER: I see.

4 I think in response to a hypothetical that was just
5 posed to in redirect you indicated that there is essentially
6 no difference on socioeconomic impacts between taking 10,000
7 acres of land and permanently fallowing it for 75 years as
8 compared with taking 10,000 acres of land for an increment
9 of ten years and then moving to another 10,000 acres and
10 fallowing for ten years?

11 DR. SMITH: I don't think that is a fair
12 characterization of my testimony. The testimony said is
13 that the economic models used to estimate these impacts do
14 not make that distinction. There are other considerations,
15 however, which are outside the scope of the economic models
16 where indeed one would not believe that to be the case.

17 MR. SLATER: So your testimony -- Strike that.

18 Your testimony is then that the models did not show the
19 distinction?

20 DR. SMITH: Correct.

21 MR. SLATER: But you believe that there is a
22 distinction, correct?

23 DR. SMITH: Yes, I do.

24 MR. SLATER: As an example, if a payment were made and
25 land were permanently retired or fallowed, an impact might

1 be that the person or persons would leave the community,
2 correct?

3 DR. SMITH: You mean the person who sold the land?

4 MR. SLATER: Correct.

5 DR. SMITH: That is separate and apart from the
6 employment issues?

7 MR. SLATER: That additive.

8 DR. SMITH: That would be separate and apart.

9 MR. SLATER: If a -- to use the example of if the
10 10,000 acres of land were returned to farming, you might
11 expect some reinvestment again into the community associated
12 with the reactivation of the farm, correct?

13 DR. SMITH: You would expect investment. You would
14 expect probably significant leaching because if we are
15 contemplating leaving land fallow for the time period
16 contemplated in the question, there is significant salinity
17 control issues, not on the land itself but even on any
18 neighboring fields.

19 MR. SLATER: Which gets us back to short term is
20 better, correct?

21 DR. SMITH: I don't know short term is better. As I
22 testified to Mr. Osias' question, maybe I'm just too
23 conservative. But underwriting a long-term fixed commitment
24 with a bunch of series of short-term contracts is
25 promiscuous risk taking.

1 MR. SLATER: It is possible to design a contract or
2 agreement which allows a landowner to opt in over a given
3 period of years such as 20 years, for example, correct?

4 DR. SMITH: It depends on how that is drafted. In the
5 sense that are you talking about an obligation which may be
6 assignable, but the person can only opt out if somebody
7 voluntarily steps into his shoes? Is that the opt out?

8 MR. OSIAS: He asked opting in, didn't you ask opting
9 in?

10 MR. SLATER: No.

11 DR. SMITH: Could you read the question, please?

12 (Record read as requested.)

13 DR. SMITH: What does that question mean?

14 MR. SLATER: I'll rephrase it.

15 Is it possible to design a fallowing program where a
16 landowner agrees to participate in the program for one year
17 every 20 years?

18 DR. SMITH: One year every 20 years?

19 MR. SLATER: Correct.

20 DR. SMITH: I want to be sure I understand the terms of
21 the contract.

22 That you will be in one out of 20?

23 MR. SLATER: That's correct.

24 DR. SMITH: Right. It is possible to write that piece
25 of paper.

1 MR. SLATER: It is also possible to write a similar
2 piece of paper over a ten-year period, correct?

3 DR. SMITH: Yes.

4 MR. OSIAS: Shouldn't take ten years to write the
5 piece of paper.

6 MR. SLATER: I don't know. Depends on who is writing
7 it.

8 Under such a program the adverse impact of keeping land
9 fallowed for periods in excess of one year could be reduced,
10 correct?

11 DR. SMITH: Yeah, yes.

12 MR. SLATER: I have no further questions.

13 Thank you.

14 CHAIRMAN BAGGETT: Thank you.

15 I have none.

16 Any of staff?

17 With that we have at least learned today that attorneys
18 are good for turning pages, if nothing else.

19 MR. OSIAS: I don't know if I was that good.

20 CHAIRMAN BAGGETT: With that, we have some exhibits for
21 IID, Phase II.

22 MR. OSIAS: Yes.

23 CHAIRMAN BAGGETT: Thank you, Dr. Smith.

24 MR. OSIAS: Our witnesses now are complete for Phase
25 II. We would offer in all their testimony. We'd offer in

1 all the exhibits that we'd presubmitted. And we received no
2 objection to any of them, at least to date.

3 CHAIRMAN BAGGETT: No objection?

4 MR. KIRK: I do have a question, counsel. On Exhibit
5 60 it wasn't clear how that related to your case in chief.
6 That is the House report, 105-621.

7 MR. OSIAS: That is legislative history to the Salton
8 Sea Restoration Act?

9 MR. KIRK: Actually, as far as I can tell, it isn't the
10 legislative history. It's a House report on a bill that
11 didn't survive.

12 MR. OSIAS: It is legislative history related to Salton
13 Sea restoration.

14 MR. ROSSMANN: Mr. Chairman, I don't know if Mr. Kirk
15 is making an objection, but my understanding is --

16 CHAIRMAN BAGGETT: I think he is.

17 MR. ROSSMANN: -- that Exhibit 60 is identified as the
18 legislative history for the act. When I first read Exhibit
19 60, I interpreted that it was actually the history of the
20 act as enacted. I think it is an appropriate subject for
21 judicial notice, but we ought to make sure it is correctly
22 identified.

23 CHAIRMAN BAGGETT: Correctly labeled?

24 MR. ROSSMANN: Yes, sir.

25 MR. OSIAS: At least on our exhibit list, Exhibit 60

1 says, H. Rep. 105-621 (Sonny Bono Memorial Salton Sea
2 Reclamation Act), July 14th, 1998. I assume that is what it
3 says on the top of it.

4 MR. KIRK: That is what I have, as well. I think,
5 again, I wasn't --

6 MR. OSIAS: There is a better title. I think that is
7 the title that is on the document.

8 MR. KIRK: I am not sure about that either.

9 CHAIRMAN BAGGETT: It doesn't assume that that is the
10 final.

11 MR. KIRK: I just want to note that that is not the
12 final piece of legislation, nor the complete legislative
13 history.

14 CHAIRMAN BAGGETT: Noted obviously on the record. I
15 don't know that we need to change that.

16 MS. DIFFERDING: I have a point of clarification.
17 Didn't you have one additional exhibit that you identified
18 in addition to the ones that you submitted?

19 MR. OSIAS: We submitted Exhibit 66 which was the
20 picture of the conservation projects identified at the time.
21 I think I offered it at the time, and I think you suggested
22 I wait until now. I am waiting till now.

23 Thank you for the reminder. That includes Exhibit 66
24 in our offer.

25 CHAIRMAN BAGGETT: Very good. So admitted.

1 Thank you.

2 With that, let's -- while San Diego is getting ready
3 for their two witnesses, on the 13th we will be back at
4 9:00 at the Bonderson Building, the old Water Board. We
5 have arranged to use that so we don't have to move at least
6 the first three days and play musical meeting rooms. We'll
7 be there for three straight days where we can lock things up
8 again at night. I think unless objection I would like to
9 change a couple parties around. We will see where we end up
10 today first.

11 The Tribes have asked to go on the 14th or later
12 because of a previous commitment in court on the 13th, and
13 unless there is any reason that we shouldn't switch order
14 between them and the Salton Sea Authority, Mr. Kirk didn't
15 have a problem with it. So we will do that. So you will
16 not be on until the 14th the earliest, and we will note
17 today where that's at. And Mr. Gruenberg from the Region 7
18 Board will be here no earlier than the afternoon of the
19 13th, but also on the 14h if he doesn't get in the afternoon
20 of the 13th.

21 MR. OSIAS: If we finish with San Diego today?

22 CHAIRMAN BAGGETT: Salton Sea Authority will be next.

23 MR. OSIAS: Today or on the 13th?

24 CHAIRMAN BAGGETT: How late do you want to stay?

25 MR. OSIAS: On the 13th.

1 MR. KIRK: In fact, I assume if San Diego completes
2 early today, in fact, the Tribes would present today.

3 CHAIRMAN BAGGETT: The Tribes will present today if we
4 do. I'm not that optimistic.

5 MR. ROSSMANN: Mr. Chairman, may I make a suggestion at
6 the conclusion of the hearing this afternoon I think now
7 that we have all been at it a while, we are probably better
8 at estimating what the times will be for the entire
9 remaining parties. And it will help all of us if we can at
10 least target out what the dates would look like so we can
11 advise our witnesses.

12 CHAIRMAN BAGGETT: Let's do that. Good suggestion.
13 With that, Mr. Slater.

14 MR. SLATER: We have a brief opening to set the stage
15 for our second phase testimony. I'd like to begin with
16 indicating our joinder in the opening statement that was
17 made by David Osias on behalf of Imperial Irrigation
18 District yesterday, our partners in this process and
19 copetitioners.

20 I would, however, like to indicate an emphasis on a
21 couple of elements. The first is correctly stated by this
22 Board, the issue in the second phase is whether there is an
23 unreasonable impact or injury to fish and wildlife, by
24 definition that inquiry is a two-prong test. That would be
25 true whether this Board was reviewing the action pursuant to

1 the Public Trust Doctrine or pursuant to the 1700 series of
2 the Water Code.

3 It would be obliged to take into account what the
4 benefits are of this associated activity and consider the
5 impacts and decide in the context of the facts and
6 circumstances of this case whether that impact or injury
7 identified is unreasonable.

8 In the first phase this Board heard substantial
9 credible evidence from various witnesses who testified to
10 the overwhelming benefits associated with completing this
11 transfer and moving forward on the QSA. As to the question
12 of injury to fish and wildlife of impacts, the EIR has
13 served as a platform for understanding what the potential
14 impacts of this transaction or transfer might be. We note
15 that this Board reserves discretion and has ability to
16 consider those impacts in light of the mitigation measures
17 that are described in the EIR/EIS and the potential
18 alternatives that are described in the EIR/EIS. And on a go
19 forward basis the parties can benefit from having those
20 conditions be known and understood.

21 With regard to this Board's responsibility as a
22 responsible agency under CEQA for purposes of environmental
23 review, there are two large issues that have been the
24 subjects of testimony and the written exhibits. The first
25 is socioeconomic impacts. And with regard to that issue, it

1 appears to us, and we think the testimony thus far has
2 demonstrated, that the Imperial Irrigation District is best
3 suited to decide how the proceeds that are made available
4 from the transferees, San Diego or Coachella or Met,
5 notwithstanding, the best method to distribute those
6 proceeds and in designing a conservation program that fairly
7 balances the benefits among its various constituents,
8 farmers and community and in responding to a program
9 directive or conditions of approval that were developed by
10 this Board in a decision.

11 With regard to the issue of growth inducement, we would
12 state that it is a red herring; it is a nonissue. It is so
13 because what is involved in this case is essentially a
14 reclassification of Colorado River water. Water that
15 historically came from the river was made available to the
16 Metropolitan Water District pursuant to its rights and
17 priority on the Colorado River through an existing
18 conveyance facility, and then distributed within the
19 existing service territory of Metropolitan to San Diego. So
20 it is taking an existing supply, moving it through existing
21 facilities to an existing customer base.

22 What is going on is a legal reclassification of the
23 water, water which was once under the title held by
24 Metropolitan in which San Diego purchased as a mere customer
25 of Metropolitan, has been converted to a contractual, a

1 legal contractual relationship wherein San Diego retains an
2 independent control over that supply.

3 Much has been made about the subject of reliability.
4 Indeed, San Diego is here in a quest for reliability. But
5 it has not deannexed from Met. It is still a member agency
6 of Metropolitan. And it is entitled to send orders to
7 Metropolitan and as a member agency of Metropolitan it is
8 entitled to receive the water. And you heard testimony in
9 Phase I from Dennis Underwood from Metropolitan describing
10 the many measures that Metropolitan is pursuing to make its
11 water supply more reliable. San Diego has the benefit of
12 the IID transaction, if this Board elects to approve it, and
13 it will still have all the benefits associated with being a
14 member agency of Metropolitan, including the right to buy
15 water.

16 And against that backdrop we acknowledge and understand
17 that this Board is a responsible agency, and it is perfectly
18 proper for it to want to take testimony and hear
19 consideration of growth inducement. However, the practice of
20 this Board has historically been that where the issue of
21 growth inducement has been raised and it is part of a
22 larger environmental impact report, it has deferred the
23 conditioning to the local agencies who are responsible for
24 the day-to-day administration of that portion of the
25 project.

1 I cite to you the State Board decision in 1635 and
2 Water Rights Order 80-7 as examples. And so we are here
3 prepared today to explain why it is not growth inducing, and
4 we urge you to consider your prior restraint in conditioning
5 that element of this large project.

6 With that, I think I would like to turn it over to
7 Stephanie Hastings who will lead us through direct.

8 MS. HASTINGS: Mr. Chairman, Mr. McLaughlin was not
9 here when you administered the oath.

10 (Oath administered by Chairman Baggett.)

11 ---oOo---

12 DIRECT EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

13 BY MS. HASTINGS

14 MS. HASTINGS: I will begin with an individual direct
15 examination and then I will offer both of the witnesses for
16 cross-examination as a panel.

17 Mr. Purcell, please state your name and spell your last
18 name for the record.

19 MR. PURCELL: My name is Larry Purcell. Last name is
20 spelled P-u-r-c-e-l-l.

21 MS. HASTINGS: In front of you I hope you will find San
22 Diego County Water Authority Exhibit No. 40. Do you
23 recognize that?

24 MR. PURCELL: I do.

25 MS. HASTINGS: Can you tell us what it is?

1 MR. PURCELL: It is the written statement prepared for
2 these proceedings, my written statement prepared for these
3 proceedings.

4 MS. HASTINGS: Does that appear to be a true and
5 correct copy?

6 MR. PURCELL: It does.

7 MS. HASTINGS: Do you swear or affirm that your written
8 testimony is true and correct?

9 MR. PURCELL: I do.

10 MS. HASTINGS: 40A, which is attached there, is that
11 also your bio or statement of qualifications?

12 MR. PURCELL: Yes, it is.

13 MS. HASTINGS: Does that appear to be accurate?

14 MR. PURCELL: It does.

15 MS. HASTINGS: Can you tell us what your position is
16 at the Authority and generally your responsibilities?

17 MR. PURCELL: Water resources manager for the San
18 Diego County Water Authority. My responsibilities include
19 overseeing a staff involved in water resource planning and
20 environmental compliance.

21 MS. HASTINGS: Can you describe a little bit your
22 background as well as your qualifications?

23 MR. PURCELL: I have a Master of Science degree in
24 biology, 24 years of experience performing environmental
25 assessments and regulatory compliance and been involved in

1 performing scientific studies both in the field and the
2 laboratory and have been involved in the preparation and
3 review of numerous environmental documents pursuant to
4 California Environmental Quality Act and National
5 Environmental Policy Act.

6 MS. HASTINGS: With respect to this project in
7 particular, can you tell us about your involvement in the
8 preparation of the environmental review for this project?

9 MR. PURCELL: Yes. Upon execution of the agreement
10 between Imperial Irrigation District and the San Diego
11 County Water Authority, a provision in that agreement
12 stipulates the Authority as the responsible agency under
13 CEQA. I was asked to participate in a consultant selection
14 panel with the IID and the Bureau of Reclamation, which
15 ultimate led to the selection of CH2MHill as the consultant
16 to prepare the draft environmental document.

17 Subsequent to that, I was appointed the Authority
18 representative to a coordinating committee, which is again
19 composed of representatives from the Bureau of Reclamation,
20 the Imperial Irrigation District and the consulting team.
21 That committee was formed to serve as a forum for resolving
22 all issues related to preparation of the draft document.

23 MS. HASTINGS: Has the draft document been prepared for
24 this project?

25 MR. PURCELL: The draft document has been prepared and

1 released to public review. The public review actually
2 closed last Friday, April 26th.

3 MS. HASTINGS: What is your involvement from this point
4 on with respect to that draft document?

5 MR. PURCELL: From this point on we are now at the
6 stage where the comment letters that have been submitted are
7 being evaluated, and responses to comments are being drafted
8 and we will prepare the Final EIR/EIS.

9 MS. HASTINGS: The document that is in front of you,
10 the large binder, does that appear to be the draft document
11 that you are referring to, at least Volume I of it?

12 MR. PURCELL: This is a part of it, yes.

13 MS. HASTINGS: For the record, that is IID Exhibit 55.

14 Turning -- one more question about your involvement in
15 the project preparation of the draft document. Were there
16 any particular areas for which you were primarily
17 responsible?

18 MR. PURCELL: Yes. My involvement on the committee was
19 -- first thing was, of course, to ensure the overall
20 adequacy of the environmental document as it progressed
21 through the different phases. Secondly, my primary
22 responsibilities were those areas of interest to my board of
23 directors, which was the Lower Colorado River and the San
24 Diego region.

25 MS. HASTINGS: Turning specifically to the San Diego

1 service area subregion. In your opinion, based on your
2 knowledge, professional experience and role in the
3 environmental review process for this project, what
4 environmental impacts, if any, would the proposed project
5 have in the San Diego County Water Authority service area?

6 MR. PURCELL: There were no impacts identified for the
7 San Diego region.

8 MS. HASTINGS: Can you explain briefly the basis for
9 that conclusion.

10 MR. PURCELL: Sure. There would be no change in the
11 quantity or quality of water delivered to San Diego
12 County. There would be no new facilities proposed to
13 handle this water. There would be no construction proposed
14 as far as any new facilities. There would be no additional
15 water purchased or delivered to San Diego County.

16 Under the terms of the exchange agreement with
17 Metropolitan Water District, the water destined for San
18 Diego would be diverted as it has in the past at the
19 Whitsett intake on Lake Havasu. It would travel through the
20 Colorado River aqueduct to an existing Metropolitan facility
21 and be delivered to San Diego County Water Authority at
22 existing points of delivery where we already receive water
23 for Metropolitan.

24 MS. HASTINGS: You just referenced the exchange
25 agreement as a method by which the water would be

1 transferred to the Authority. Can you please turn to -- I
2 have in front of you San Diego Exhibit 43.

3 Can you tell me what that is?

4 MR. PURCELL: These are notices of exemptions under the
5 California Environmental Quality Act prepared for the
6 exchange agreement.

7 MS. HASTINGS: Who is the contact person that is
8 identified on the bottom of that document?

9 MR. PURCELL: That would be me.

10 MS. HASTINGS: Can you tell us the date of the
11 document?

12 MR. PURCELL: Dated November 19th, 1998.

13 MS. HASTINGS: Does the document appear to have been
14 filed in the County of San Bernardino, Riverside and San
15 Diego County and that also filed with the OPR, Office of
16 Planning and Research?

17 MR. PURCELL: Yes, they do.

18 MS. HASTINGS: Can you read for me, please, the last
19 full textual paragraph which is titled Why the Project is
20 Exempt?

21 MR. PURCELL: The execution of the agreement is not a
22 project under CEQA as defined in 14 CCR, Section 157378, but
23 to the extent that the agreement constitutes a project, it
24 contemplates activities that consist of the operation of
25 existing water diversion, transmission, storage, treatment

1 and other facilities of the Metropolitan Water District and
2 San Diego County Water Authority and, therefore, is
3 categorically exempt from CEQA.

4 MS. HASTINGS: Can you tell me if you have received any
5 opposition to the filing of this document?

6 MR. PURCELL: I have received no opposition.

7 MS. HASTINGS: You concluded that there would be no
8 environmental impacts to San Diego subregion. Did the
9 environmental document as well make that conclusion?

10 MR. PURCELL: It did.

11 MS. HASTINGS: Given your opinion and the conclusion in
12 the environmental document, would there be a requirement for
13 any mitigation measure as a result?

14 MR. PURCELL: No, no requirement.

15 MS. HASTINGS: Now separate returning to the Lower
16 Colorado River subregion, in your opinion, based on your
17 knowledge, professional experience and roll in the
18 environmental review process, will the proposed project have
19 environmental impacts in the Lower Colorado River subregion?

20 MR. PURCELL: Yes. The environmental impacts were
21 identified in four resource areas: Hydrology, biological
22 resources, air quality and public services.

23 MS. HASTINGS: In your opinion, again based on your
24 knowledge, professional experience and role in the
25 environmental review process, would any of those identified

1 environmental impacts been considered potentially
2 significant?

3 MR. PURCELL: Yes. Potentially significant impacts
4 were identified for the resource area biological resources.
5 All the other resource areas were less than significant.

6 MS. HASTINGS: Can you briefly describe for us the
7 potentially significant impacts in the biological resources
8 section?

9 MR. PURCELL: The impacts that are in the biological
10 resources pertain to potential impacts to riparian habitat,
11 to backwater habitat and to aquatic habitat on the river
12 itself.

13 MS. HASTINGS: Does the environmental review document
14 make the same conclusions?

15 MR. PURCELL: It does.

16 MS. HASTINGS: In your written testimony you suggested
17 that the environmental review document analysis is overly
18 conservative with respect to its analysis of the project's
19 potential impact on biological resources.

20 Can you explain why you came to that conclusion?

21 MR. PURCELL: Yes. The hydrologic modeling done by the
22 Bureau of Reclamation for the Colorado River rejected an
23 average elevation drop for the surface of the river of about
24 4.5 inches. The application of that 4.5 inch drop for the
25 impact analysis, I believe, contributes to an overestimation

1 of the estimate of the impacts. For example, the analysis
2 assumes that instantaneous drop of 4.5 inches, when, in
3 fact, the 4.5 inches would actually decline over a period of
4 ten or more years as the transfer is ramped up. The 4.5
5 inch drop is compared against a static river elevation, a
6 static average river elevation, when, in fact, the river on
7 a daily basis fluctuates over a range of five feet.

8 The analysis assumes a one-to-one instantaneous linkage
9 between surface elevation drop of the river and any
10 hydraulically connected backwaters, which would tend to
11 overemphasize the impact that might occur off of the river
12 itself. The backwaters themselves, there is an average
13 slope of the backwaters, the bottom topography that was
14 applied that used the flatest slope that they were aware of
15 for all of the backwaters which would tend to exaggerate the
16 impacts of backwaters when the slope is not quite that flat.
17 Those are some of the examples I think where the analysis
18 overestimated impacts.

19 MS. HASTINGS: Not withstanding these concerns about
20 the possible overestimation of possible impacts, is the San
21 Diego County Water Authority nevertheless willing to accept
22 the conclusions that are made in the environmental document
23 with respect to biological resources in the Lower Colorado
24 River?

25 MR. PURCELL: Yes, we are.

1 MS. HASTINGS: In your opinion, based on your
2 knowledge, professional experience, and role in the
3 environmental review process, are the conservation measures
4 that are also outlined in that document sufficient to fully
5 mitigate for these potentially significant impacts?

6 MR. PURCELL: I believe they are.

7 MS. HASTINGS: Can you briefly describe for us what
8 those mitigation measures are as they are outlined in the
9 draft environmental document?

10 MR. PURCELL: I will need to look them up.

11 Beginning on Page 3.2-107, there is a discussion of
12 impacts to the biological resources of the Colorado River.
13 Identified here is up to 279 acres of occupied southwestern
14 willow flycatcher habitat. The mitigation measure to
15 mitigate for that is the creation and maintenance of 372
16 acres of corresponding riparian willow habitat.

17 Impacts to the backwaters has been calculated at 33
18 acres. The mitigation that has been proposed to mitigate
19 for that is the creation of 44 acres of backwaters.

20 The impacts to the aquatic habitat of the river is
21 identified at 26 acres. To mitigate for those impacts,
22 potential impacts to fish habitat due to the loss of those
23 26 surface acres is proposed to stock 27,000 razorback
24 suckers in the river between Parker and Imperial Dam by the
25 year 2006. There is also a component of capturing wildborne

1 thorny tailed chub and helping to further the genetic
2 research on those particular fish.

3 MS. HASTINGS: Thanks.

4 The environmental document also evaluates whether the
5 proposed project will induce growth. In your opinion, based
6 on your knowledge, professional experience and role in this
7 environmental review process, will the proposed project
8 induce growth in San Diego County or along the Lower
9 Colorado River?

10 MR. PURCELL: No, it will not.

11 MS. HASTINGS: Prior San Diego County Water Authority
12 witnesses have testified that the proposed project will
13 increase the reliability of San Diego's water supply. Does
14 the fact that San Diego's water supply will become more
15 reliable as a result of this Board's approval of the
16 proposed project induce growth in San Diego County?

17 MR. PURCELL: No, it will not. San Diego's water
18 supply today is highly reliable. The Colorado River
19 aqueduct has flowed full for a decade or more. In fact, in
20 the late '80s or early '90s at the height of the drought
21 when Metropolitan cut San Diego's supplies by 31 percent and
22 threatened to increase that to 50 percent, the Colorado
23 River aqueduct flowed full or essentially full.

24 MS. HASTINGS: Thank you.

25 That is all my questions.

1 If I could now turn to Mr. McLaughlin.

2 CHAIRMAN BAGGETT: Please.

3 MS. HASTINGS: Mr. McLaughlin, will you please state
4 your name for the record and spell your last name?

5 MR. MCLAUGHLIN: My name is Michael McLaughlin. Last
6 name M-c-L-a-u-g-h-l-i-n.

7 MS. HASTINGS: I believe in front of you you will
8 find San Diego County Water Authority Exhibit 39. Do you
9 recognize that?

10 MR. MCLAUGHLIN: Yes, that is my statement that I
11 provided for these hearings.

12 MS. HASTINGS: Is it a true and correct copy?

13 MR. MCLAUGHLIN: Yes.

14 MS. HASTINGS: Do you swear or affirm that your written
15 testimony is true and correct?

16 MR. MCLAUGHLIN: Yes.

17 MS. HASTINGS: Is 39A a also statement of your
18 qualifications? I think you will find it in the packet.

19 MR. MCLAUGHLIN: Yes.

20 MS. HASTINGS: Can you briefly describe for us your
21 background and qualifications?

22 MR. MCLAUGHLIN: I am currently the director of
23 planning for the San Diego Association of Governments,
24 SANDAG. I have been in the capacity for a little over ten
25 years. Prior to that I worked at SANDAG as a senior

1 regional planner, and before that with the City of Columbus,
2 Ohio. I have a Master's in public administration from
3 Northern Illinois University and a Master's degree in city
4 and regional planning from the Ohio State University.

5 MS. HASTINGS: Phi Beta Kappa?

6 MR. MCLAUGHLIN: They tell us that we have to say that
7 when you leave the university. I currently teach graduate
8 classes at San Diego State University in planning and
9 housing policies. I am very active in the American Planning
10 Association, have been a national awards jurist, Outstanding
11 Planner Award and very active in professional associations.

12 MS. HASTINGS: With respect to your role at SANDAG what
13 are your responsibilities, specifically?

14 MR. MCLAUGHLIN: I'm responsible for a number of
15 planning activities of the agency, including national
16 planning, environmental management, habitat/open space,
17 land use planning, urban design and especially in the
18 preparation of regional strategies for growth and growth
19 management.

20 MS. HASTINGS: SANDAG, the San Diego Association of
21 Governmentals, if I can call it the short form, can you tell
22 me about what their role is in the San Diego region, their
23 responsibilities?

24 MR. MCLAUGHLIN: They have 40 to 45 responsibilities,
25 but I think the primary responsibilities to the agencies

1 are its role as the metropolitan planning organization, the
2 MPO, and also the regional transportation agency for state
3 planning purposes. We are also the regional transportation
4 commission. We administer the half cent sales tax in San
5 Diego for transportation improvements. We also do things
6 like the allocation of property means, based upon the state
7 requirements with a solid waste task force, coordination of
8 land use planning processes and clearly the preparation of
9 the regional transportation plan.

10 MS. HASTINGS: Your written testimony also indicated
11 that you do growth projections on a fairly frequent basis.
12 How does that work?

13 MR. MCLAUGHLIN: SANDAG has a part of its metropolitan
14 planning organization requirements, the MPO requirement, in
15 preparation of the regional transportation plan, SANDAG
16 prepares regional growth forecasts where we look at the
17 long-term forecasts for the region, a 20- to 30-year period
18 and determine the growth in terms of employment, population,
19 housing.

20 MS. HASTINGS: Your testimony describes a two-step
21 process whereby you conduct those growth projections. Can
22 you tell us about that?

23 MR. MCLAUGHLIN: Yes. The first step in the process is
24 the preparation of a regional forecast, what are our
25 expectations in terms of growth in the San Diego region over

1 the time frame involved.

2 And then the second step in that process is the
3 allocation of that growth to the various jurisdictions
4 within SANDAG, the 18 cities and the County of San Diego.

5 MS. HASTINGS: In the development of either these
6 region -- the initial regionwide forecast or subsequently
7 the more focused city/county forecast, does SANDAG consider
8 the supply of water which is available to the San Diego
9 County Water Authority as a factor or criteria in developing
10 this growth forecast?

11 MR. MCLAUGHLIN: No, we do not.

12 MS. HASTINGS: In development of either the initial
13 forecast or in the more focused forecast, does SANDAG
14 consider the reliability of the Authority for supply as a
15 factor or criteria in development?

16 MR. MCLAUGHLIN: In neither one of those steps.

17 MS. HASTINGS: Same question again with respect to
18 either of those steps. Has SANDAG considered or otherwise
19 taken into account the San Diego County Water Authority
20 proposed transfer of water from the Imperial Irrigation
21 District to San Diego County?

22 MR. MCLAUGHLIN: No, we have not.

23 MS. HASTINGS: What types of factors are included in
24 those growth inducements?

25 MR. MCLAUGHLIN: In the regional contract in the

1 two-step process, the regional context considers three
2 related factors. One is the natural increase. And the
3 second one is growth from within the United States, and the
4 third factor is international migration.

5 In the natural increase we use the standard cohort
6 survival where you just age population and use accepted
7 fertility rate to determine a natural increase in the
8 growth. And then we use a metric equation to determine the
9 immigration, both domestic immigration, and we look at
10 things like job creation, wages, demand, construction
11 prices, employment, the standard inputs to those models.
12 And on the international context we consult with the
13 agencies responsible for that to determine the SANDAG's,
14 San Diego region's share of those growths.

15 Those models all deal with capturing from an economic
16 context SANDAG's share of growth both from a Southern
17 California, Southwestern United States and United States,
18 and in the international context in terms of what it would
19 capture from international migration.

20 The second step in the process, the distribution to the
21 cities and the county is basically based upon the local
22 land use plan and policies, the transportation network,
23 length of trip and the connections between residential
24 employment. And all those factors are used to calculate the
25 distribution and as well as the available land and what that

1 land is planned for in terms of development.

2 MS. HASTINGS: So essentially the numbers developed in
3 the first phase have been allocated to a particular region
4 in the second phase; is that correct?

5 MR. MCLAUGHLIN: The first step is the regionwide
6 number. The second number is allocated to the cities in
7 that county for the unincorporated portion of the county.

8 MS. HASTINGS: Do you have an understanding as to
9 whether the San Diego County Water Authority is required to
10 utilize SANDAG's most recent growth forecasts in developing
11 its own water supply demands?

12 MR. MCLAUGHLIN: I am not sure.

13 MS. HASTINGS: Do you have any understanding as to
14 whether the San Diego County Water Authority is required to
15 take into account the numbers that you have separately
16 identified in your growth forecast?

17 MR. MCLAUGHLIN: SANDAG and the County Water Authority
18 have entered into a memorandum of agreement in terms of the
19 relationship between our regional growth management
20 strategy, so indirectly two steps, yes.

21 MS. HASTINGS: In fact, can I ask you to turn to
22 Exhibit 20, which I believe is right in front of you. Do
23 you recognize what that document is?

24 MR. MCLAUGHLIN: Yes, this is the Memorandum of
25 Understanding between SANDAG and the County Water Authority

1 implementing the regional growth management strategy in
2 regards to the section on water.

3 MS. HASTINGS: In fact, could you turn to, I believe it
4 is to, Page 3 and read for us from Paragraph 4? It is
5 numbered Paragraph 4.

6 MR. MCLAUGHLIN: Use of SANDAG's regional growth
7 forecast. The Authority hereby agrees to use SANDAG's most
8 recent regional growth forecast for planning purposes.
9 These forecasts will provide a basis for the Authority to
10 plan the amount and types of facilities needed to serve the
11 forecast population.

12 MS. HASTINGS: I am now going to now hand you what has
13 been identified as National Wildlife Federation Exhibit No.
14 6. I will bring it over to you.

15 Can you tell me if you recognize that document?

16 MR. MCLAUGHLIN: Yes. This is the economic prosperity
17 strategy which is one of several elements of the regional
18 growth management strategy.

19 MS. HASTINGS: Who is the author?

20 MR. MCLAUGHLIN: The author is SANDAG, the San Diego
21 Association of Governments.

22 MS. HASTINGS: The document before you, can you leaf
23 through it and tell me if it appears to be either an excerpt
24 or a complete copy of the document?

25 MR. MCLAUGHLIN: It has various pages from the

1 document, so half a dozen pages from a document that is this
2 thick.

3 MS. HASTINGS: In fact, I've placed on your table the
4 full and complete copy of that document. Can you read for
5 the record the title of the document? And I would like to
6 identify it as San Diego County Water Authority Exhibit, I
7 believe, 46.

8 MR. MCLAUGHLIN: The title of it is the San Diego
9 Regional Economic Prosperity Strategy, subtitle, Toward a
10 Shared Economic Vision for the San Diego region.

11 MS. HASTINGS: In fact, I have copies of that, so I
12 will make those available at the break.

13 And that concludes my questions.

14 CHAIRMAN BAGGETT: Thank you.

15 Cross-examination, Mr. Gilbert?

16 MR. GILBERT: No, waive.

17 CHAIRMAN BAGGETT: Mr. Du Bois.

18 ---oOo---

19 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

20 BY MR. DU BOIS

21 MR. DU BOIS: I just want to ask a couple questions
22 regarding Mr. McLaughlin's duties and assessment of this
23 project that is under consideration here, the water
24 transfer.

25 My first question is: What does this project have to

1 do with growth management in San Diego?

2 MR. MCLAUGHLIN: It's part of the context of SANDAG's
3 strategy, especially the economic prosperity strategy, where
4 we identified the need for safe and reliable water supply.

5 MR. DU BOIS: For a period of how many years?

6 MR. MCLAUGHLIN: The strategy itself deals with the
7 growth and the growth impacts for the 20-year period, but
8 there is not a specific set of time frames associated with
9 the various elements, for example the housing element has a
10 shorter time frame, five years.

11 MR. DU BOIS: Do you keep track of how many houses are
12 under construction at any particular time in San Diego
13 County?

14 MR. MCLAUGHLIN: It's part of the estimates and annual
15 tracking of construction activity. It is not a stated
16 responsibility of the agency to do, so we use that
17 information to do updates to population estimates, updates
18 to forecast processes. Forecast processes, we revisit them
19 every four to five years in order to calibrate the models,
20 so to speak, in order to ensure their accuracy. That
21 becomes part of that information, but that is not a
22 requirement of the agency to do so.

23 MR. DU BOIS: Could you state an estimate of how many
24 homes are under construction right now?

25 MR. MCLAUGHLIN: No, I can't. I don't have that

1 number. The number of units under construction in San
2 Diego, no, I don't know that number.

3 MR. DU BOIS: Could you say how many house building
4 applications are in the permit process now?

5 MR. MCLAUGHLIN: SANDAG is not a permitting or
6 regulatory agency, so we don't keep track of permits. So
7 that information wouldn't be available to me.

8 MR. DU BOIS: Thank you.

9 I have no further questions.

10 CHAIRMAN BAGGETT: Thank you.

11 Mr. Rodegerdts.

12 MR. RODEGERDTS: Nothing.

13 CHAIRMAN BAGGETT: Mr. Rossmann.

14 ---oOo---

15 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

16 BY COUNTY OF IMPERIAL

17 BY MR. ROSSMANN

18 MR. ROSSMANN: Mr. Purcell, were you here during the
19 Phase I case of San Diego?

20 MR. PURCELL: No, sir, I was not.

21 MR. ROSSMANN: Thank you.

22 The Memorandum or Understanding that the Bureau and IID
23 and San Diego executed was with the two lead and one
24 responsible agency; is that correct, on the EIR?

25 MR. PURCELL: I'm assuming you are referring to the MOU

1 for the coordinating committee?

2 MR. ROSSMANN: Yes, sir.

3 MR. PURCELL: Yes.

4 MR. ROSSMANN: Was the State Board invited to join that
5 coordinating committee?

6 MR. PURCELL: Not that I am aware of.

7 MR. ROSSMANN: State Board is the responsible agency
8 under this environmental document; is that correct?

9 MR. PURCELL: I believe that is the case.

10 MR. ROSSMANN: Did you also participate in the
11 preparation of the QSA EIR?

12 MR. PURCELL: I did.

13 MR. ROSSMANN: And San Diego is one of the, quote,
14 colead agencies for that document; is that correct?

15 MR. PURCELL: That is correct.

16 MR. ROSSMANN: I was hoping to ask one question in
17 this, but it is not going to work.

18 Do you still maintain that this project is not growth
19 enducing in San Diego?

20 MR. PURCELL: That is correct, sir.

21 MR. ROSSMANN: Sorry, Mr. Chairman, I guess I've got to
22 go through this.

23 When you said in your testimony that there would be no
24 change in the quantity or quality of water to San Diego, no
25 change compared to what?

1 MR. PURCELL: To the baseline, sir.

2 MR. ROSSMANN: What is the baseline?

3 MR. PURCELL: The baseline is the full Colorado River
4 aqueduct.

5 MR. ROSSMANN: Well, I thought we heard this morning
6 that the baseline from the preparers of the EIR, that the
7 baseline was California losing between 600,000 and 800,000
8 acre-feet in a normal year from that aqueduct?

9 MR. PURCELL: I don't believe that was correct, sir.

10 MR. ROSSMANN: Let me show you, sir, from IID Exhibit
11 56, which has already been admitted into evidence, the QSA
12 Draft PEIR, Page 5-8. And since I only have one copy with
13 me, I am going to read the sentence and then let you have
14 this in front of you.

15 And it says under the proposed project under
16 Alternative 1, excuse me, which is the no-project
17 alternative, MWD diversions of Colorado River water would be
18 limited to 660 KAF in a normal year, reduced from the
19 historic diversions of approximately 1.25 MAFY.

20 Is it still your position that the no-project
21 alternative includes a full Colorado River aqueduct?

22 MR. PURCELL: I believe I said the baseline includes --

23 MR. ROSSMANN: The baseline?

24 MR. PURCELL: Yes, sir.

25 MR. ROSSMANN: So it is your position that the baseline

1 and the no-project alternative differ in this respect?

2 MR. PURCELL: That is correct.

3 MR. ROSSMANN: Have you read the case, Court Appeal
4 case, of Planning and Conservation League versus Department
5 of Water Resources?

6 MR. PURCELL: No, sir, I have not.

7 MR. ROSSMANN: You're not familiar with the holding in
8 that case that the no-project alternative has to include
9 reasonable, foreseeable consequences?

10 MR. PURCELL: No, sir.

11 MR. ROSSMANN: In fact, in one of these proceedings it
12 is my recollection, you can correct me if I am wrong, that
13 representatives of San Diego testified that the consequences
14 of California being held to 4.4 million acre-feet in a
15 normal year under Metropolitan's allocations would be
16 200,000 acre-feet, give or take, less coming to San Diego as
17 part of its reliable Metropolitan supply.

18 Am I correctly remembering the testimony that was
19 given?

20 MR. PURCELL: I can't confirm that. I was not here to
21 hear that.

22 MR. ROSSMANN: What is your independent view of that?

23 MR. PURCELL: If you would restate that, please?

24 MR. ROSSMANN: Is it not the case that if according to
25 that no-project description in front of you in the QSA EIR

1 California receives 660,000 acre-feet less or Metropolitan
2 receives 660,000 acre-feet less in a normal year, that the
3 consequences to Metropolitan would be -- to San Diego would
4 be San Diego receiving approximately 200,000 acre-feet less
5 in a normal year?

6 MR. SLATER: Objection. Assumes fact not in evidence.
7 No testimony by this witness about how Metropolitan would
8 allocate the water internally in the event of a shortage.

9 MR. ROSSMANN: I am prepared, your Honor, to take the
10 time to lay that foundation, but I think it already was in
11 the environmental documentation in our prior testimony.

12 CHAIRMAN BAGGETT: I think he is asking a hypothetical,
13 anyway.

14 MR. SLATER: As a hypothetical.

15 MR. PURCELL: I'm sorry.

16 MR. ROSSMANN: Let me come back to that.

17 CHAIRMAN BAGGETT: Rephrase that.

18 MR. ROSSMANN: Your Honor, it's hypothetical in that it
19 only hasn't taken place yet.

20 CHAIRMAN BAGGETT: Right.

21 MR. ROSSMANN: But that exhibit that I just placed in
22 front of you anticipates, does it not, that in the
23 no-project scenario Metropolitan will take about 660,000
24 acre-feet less each year out of Colorado River aqueduct; is
25 that correct?

1 MR. PURCELL: I would agree.

2 MR. ROSSMANN: The consequences of that to San Diego
3 would be that San Diego under that priority would receive
4 200,000 acre-feet less?

5 MR. PURCELL: I can't verify the amount. I would
6 assume San Diego would receive something less than it
7 currently receives.

8 MR. ROSSMANN: And you are aware, sir, if I may have
9 that back, please, do I need to show you State Board Exhibit
10 1D, which is San Diego's joint application before this Board
11 petition? I will show you that. And for you I would like
12 to focus on the sentence that says the reason for the
13 proposed change of use is to accommodate anticipated growth
14 in domestic and municipal and agricultural uses in San
15 Diego.

16 I'm not going to ask you about that because your
17 general manager has already testified that is, in fact, the
18 application before this Board and that is an accurate
19 statement. But I guess my question is this: If the purpose
20 of the application is to accommodate new growth in San
21 Diego, how, if the application is granted and the transfer
22 takes place, will the project not produce new growth in San
23 Diego?

24 MR. PURCELL: My understanding of the project is that
25 it is to replace existing supplies of water currently

1 received from Metropolitan with water from Imperial
2 Irrigation District. It is not a new water supply.

3 MR. ROSSMANN: But you have testified that it will be a
4 more reliable supply?

5 MR. PURCELL: More reliable supply without any
6 additional water; that is correct.

7 MR. ROSSMANN: Are you familiar with, in general terms,
8 with Senate Bills 601 and 221 as enacted by the Legislature
9 at the last session?

10 MR. PURCELL: I am aware of them, but not familiar with
11 them.

12 MR. ROSSMANN: Could you tell your understanding of
13 what those bills require?

14 MR. PURCELL: In general, since I haven't read the
15 bills, my understanding is that it requires some sort of
16 coordination between water districts who supply water and
17 developments of certain size.

18 MR. ROSSMANN: If I represented that Senate Bill 221
19 requires that new subdivisions only be approved upon a
20 finding of assured water supply, from that premise would it
21 not be the case that subdivisions would be easier to approve
22 if the reliability of the local water supply is increased?

23 MR. PURCELL: I am not sure I can make that
24 conclusion. From the Water Authority's perspective, we are
25 not a land use agency, we are not in the business of

1 approving development. That is up to the local general
2 purpose government.

3 MR. ROSSMANN: I understand. They have to look to the
4 reliability of your water supply to make those findings.

5 MR. SLATER: Is there a question?

6 MR. ROSSMANN: No. I was responding to his question.
7 I am going to follow up with that.

8 Assuming that Senate Bill 221, as I have just
9 postulated, if, in fact, your supply was deemed unreliable,
10 would that not make it impossible to render a finding that a
11 new subdivision would have an assured water supply?

12 MR. SLATER: Objection. Calls for a legal conclusion.
13 Beyond this witness' expertise. Not land use planning
14 agency.

15 MR. ROSSMANN: He is involved, your Honor, in water
16 supply planning which is very much part of Senate Bill 221.

17 CHAIRMAN BAGGETT: I would agree. Answer the question.
18 Overruled.

19 Would you restate the question?

20 MR. ROSSMANN: My question is this: On the
21 hypothetical policy that your water supply were deemed to be
22 unreliable would that not make it difficult, if not
23 impossible, to approve a subdivision if the local land use
24 agency had to find that it was going to be supplied with an
25 assured water supply?

1 MR. PURCELL: I believe so.

2 MR. ROSSMANN: You testified that -- well, let me --
3 let me finally show you a page out of Exhibit 55, but since
4 you have it in front of you, it might go easier, sir, to ask
5 you to turn to 5-39.

6 CHAIRMAN BAGGETT: This is out of --

7 MR. ROSSMANN: Out of the EIR.

8 CHAIRMAN BAGGETT: -- out of the EIR?

9 MR. ROSSMANN: I'm sorry, yes. It's Imperial's Exhibit
10 55, Page 5-39. And I am looking under the heading SDCWA
11 Service Area and the analysis thereunder. Looks to me like
12 you've got that highlighted, so we are probably focusing on
13 the same language.

14 Yesterday we heard from the EIR consultant that they
15 primarily relied on San Diego for this analysis. Would you
16 verify that, in fact, the San Diego County Water Authority
17 provided this analysis on Page 5-39 under SDCWA Service
18 Area?

19 MR. PURCELL: The Water Authority participated in the
20 preparation of this, yes, that is correct.

21 MR. ROSSMANN: And the conclusion about growth and
22 water demand, I am reading, is, quote: The proposed project
23 would not change the assumptions upon which SANDAG has based
24 its population projections for the region.

25 Do you stand by that statement?

1 MR. PURCELL: Yes, I do.

2 MR. ROSSMANN: Would the proposed project change the
3 availability and reliability of water beyond that in the
4 no-project alternative?

5 MR. PURCELL: The project alternative for this project?

6 MR. ROSSMANN: Yes, sir, for the transfer agreement.

7 MR. SLATER: I am going to object on the basis of a
8 compound question. He asked about reliability and --

9 MR. ROSSMANN: I will break it down.

10 CHAIRMAN BAGGETT: Break it down.

11 MR. ROSSMANN: That is fair, a fair point. Just trying
12 to save some time.

13 Would the proposed project change the future
14 availability of water in the San Diego service area beyond
15 that available under the no-project circumstance?

16 MR. PURCELL: If the assumption is made that the
17 Colorado River aqueduct does not remain full, yes, it
18 would.

19 MR. ROSSMANN: Would that same answer apply for
20 reliability as well as the amount of water?

21 MR. PURCELL: Yes, I believe so.

22 MR. ROSSMANN: Thank you.

23 Let's turn to the exchange agreement, and I believe the
24 basic agreement -- I assume that your counsel has it up
25 there. It is San Diego Exhibit 4-14.

1 MS. HASTINGS: Actually, we don't have it.

2 MR. ROSSMANN: I can lend you my copy here and I'd be
3 very happy to do that.

4 What is the effective date, not the signature date, but
5 what is the effective date of this agreement?

6 MR. PURCELL: I assume you're talking about the date
7 listed on the first page?

8 MR. ROSSMANN: I am not so sure about that. That it
9 was signed, I guess, on November something, 1998, am I
10 correct, November 10th?

11 MR. PURCELL: November 10th is the date that the
12 contract was entered into.

13 MR. RODEGERDTS: I did not see a separate definition of
14 effective date in that contract.

15 MS. HASTINGS: Objection. This calls for a legal
16 conclusion.

17 MR. ROSSMANN: I am just asking the witness who
18 participated in the documentation and preparation of that
19 agreement.

20 MR. SLATER: Objection. No foundation.

21 CHAIRMAN BAGGETT: Will you lay the foundation?

22 MR. ROSSMANN: Yes, sir.

23 Did you, in fact, well, I may need my exhibits back.
24 Was it not your testimony that you signed the notice of
25 exemption on that document?

1 MR. PURCELL: That is correct. Excuse me, I am the
2 contact point. I was not the person who signed it.

3 MR. ROSSMANN: You're the contact point.

4 Are you familiar with the content of that document?

5 MR. PURCELL: In a general sense.

6 MR. ROSSMANN: Did you prepare the notice of exemption?

7 MR. PURCELL: I did not.

8 MR. ROSSMANN: You testified, however, that because it
9 was exempt, you did not have to consider mitigation
10 measures; is that correct?

11 MS. HASTINGS: Objection. Misstates the testimony.

12 CHAIRMAN BAGGETT: Sustained.

13 MR. ROSSMANN: Let me lay that foundation again to make
14 sure we have it right, your Honor.

15 Was it your testimony that because this transfer
16 agreement does not induce growth in San Diego, you do not
17 have to consider mitigation measures for any induced growth
18 in San Diego?

19 MR. PURCELL: There were no impacts identified,
20 therefore, no mitigation measures were required.

21 MR. ROSSMANN: Is it not also the case or the
22 consequence that you don't have to look at alternatives to
23 this project, alternative means, of meeting water needs in
24 San Diego if, in fact, there are no impacts in San Diego
25 flowing from this project?

1 MS. HASTINGS: Objection. Counsel, are you discussing
2 alternatives as required by the environmental document?

3 MR. ROSSMANN: Alternative means of meeting San Diego's
4 needs to maintain, as stated in the document, to maintain
5 its reliability of its water supply.

6 CHAIRMAN BAGGETT: By the document you mean?

7 MR. ROSSMANN: The environmental impact report, sir.
8 Thank you.

9 MR. PURCELL: What was the question?

10 MR. ROSSMANN: Let me try it again.

11 MR. PURCELL: Make it short. I need little words.

12 MR. ROSSMANN: On the premise that the environmental
13 impact report identifies no growth inducing impact in San
14 Diego from the water transfer agreement, does that not mean
15 that San Diego does not have to consider in this analysis
16 alternative means of meeting the project purpose?

17 MR. PURCELL: I don't believe we would have to do
18 that.

19 MR. ROSSMANN: Do you know what percentage of the San
20 Diego County economy is accounted for by the agricultural
21 sector?

22 MR. PURCELL: I do not.

23 MR. ROSSMANN: Am I correct that approximately a
24 hundred thousand acre-feet per year is annual agricultural
25 use in the San Diego service area?

1 MR. PURCELL: I couldn't verify that number.

2 MR. ROSSMANN: Let me represent that that was the
3 testimony by your San Diego predecessors in Phase I.

4 Since your counsel was inquiring about different
5 following methods in the Imperial Valley, I want to inquire
6 if, as part of this environmental workup or analysis or
7 preparation for entering into this agreement, did the San
8 Diego County Water Authority consider the alternative of
9 following agricultural lands in the San Diego service area?

10 MR. SLATER: Objection. He's already testified that
11 he didn't consider -- they haven't considered alternatives.

12 MR. ROSSMANN: Sir, he testified that they weren't in
13 the environmental impact report, but I was asking in the
14 preparation.

15 MR. SLATER: Generally, sorry.

16 CHAIRMAN BAGGETT: Please answer the question.

17 MR. PURCELL: To my knowledge, no.

18 MR. ROSSMANN: Sir, do you have any -- do you know if
19 the San Diego County Water Authority, prior to entering into
20 the agreement, and when I say entering into the agreement, I
21 mean signing the agreement that is not yet final to transfer
22 water, calculated the value per acre-foot of the imported
23 water to the San Diego economy?

24 MR. PURCELL: I don't know that.

25 MR. ROSSMANN: Do you know whether -- it is your

1 testimony that to the best of your knowledge that
2 calculation was never made?

3 MR. PURCELL: That's correct.

4 MR. ROSSMANN: Mr. McLaughlin. I just have one or two
5 questions for you, sir.

6 Maybe I should start with the last one. To your
7 knowledge, has there been any calculation by anyone, either
8 inside or outside of government, of the dollar per acre-foot
9 value of imported water to the San Diego economy?

10 MR. MCLAUGHLIN: I can't answer that question. I just
11 don't know.

12 MR. ROSSMANN: You don't know; that is a fair answer.

13 I'm glad someone else runs their household as
14 carelessly as I do.

15 MR. SLATER: Is that a question?

16 MR. ROSSMANN: Now you stated that water availability
17 is not a factor in your SANDAG forecasting?

18 MR. MCLAUGHLIN: Yes.

19 MR. ROSSMANN: It is what you might characterize as
20 pure demographic forecast based on?

21 MR. MCLAUGHLIN: Demographic and economic model.

22 MR. ROSSMANN: Right.

23 Is water availability likely to be a factor in the
24 actual development of the county as opposed to the
25 projections of future development?

1 MR. MCLAUGHLIN: Try that again.

2 MR. ROSSMANN: Is water availability likely to
3 influence the actual experienced future growth as opposed to
4 the SANDAG official projection of future growth?

5 MR. MCLAUGHLIN: I can't answer that.

6 MR. ROSSMANN: Do you know what percentage the
7 agricultural sector accounts for of the economy of San
8 Diego?

9 MR. MCLAUGHLIN: I don't know percent, but it is my
10 understanding it is one of the third or fourth largest
11 segments of the economy.

12 MR. ROSSMANN: Third or fourth largest in San Diego
13 County?

14 MR. MCLAUGHLIN: Yes.

15 MR. ROSSMANN: Thank you very much, sir.

16 No further questions.

17 CHAIRMAN BAGGETT: Defenders.

18 MR. FLETCHER: No questions.

19 CHAIRMAN BAGGETT: National Wildlife.

20 ----oOo----

21 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

22 BY NATIONAL WILDLIFE FEDERATION

23 BY MR. DOYLE

24 MR. DOYLE: Good afternoon, Mr. Purcell, Mr.

25 McLaughlin. I have a series of questions for Mr. Purcell

1 first.

2 On Page 5-39 of the EIR, Line 1, it states that the
3 proposed project, the water transfer, quote --

4 Wait for you to get there, sorry.

5 MR. PURCELL: Big document.

6 MR. DOYLE: It states that, quote, it would not
7 increase the amount of water delivered to Southern
8 California. Rather it would reallocate the existing water
9 supply to ensure drought reliability of that supply.

10 Do you agree with that conclusion, that statement?

11 MR. PURCELL: Could you --

12 MR. DOYLE: Somewhere on here.

13 First sentence.

14 MR. PURCELL: Okay.

15 MR. DOYLE: Do agree with that conclusion?

16 MR. PURCELL: Yes, I do.

17 MR. DOYLE: The Draft EIR, also on that page, also
18 concludes that the transfer, quote, would not have a
19 potential to induce or deter greater economic development or
20 population growth because it would not modify any future
21 increases of water supply that have already been planned and
22 approved.

23 Do you feel that is still an accurate statement or
24 conclusion? It would not induce or deter greater economic
25 development.

1 MR. PURCELL: I would agree with that.

2 MR. DOYLE: Just in the previous cross-examination you
3 stated that you did participate in the preparation of this
4 section, 5.2.3.4. Is that correct?

5 MR. PURCELL: Correct.

6 MR. DOYLE: Could you tell us what other parties in
7 addition to San Diego County Water Authority participated in
8 that? Do you know of the other parties in addition to the
9 consultant, obviously?

10 MR. PURCELL: It would have been CH2MHill as the
11 consultant, IID and a consultant that the Authority has
12 retained.

13 MR. DOYLE: Can I ask who that consultant is?

14 MR. PURCELL: Graystone.

15 MR. DOYLE: Thank you.

16 Is it correct -- I'm going to go to your written
17 testimony now. On Page 17, your analysis on Page 17 of
18 your written testimony, it assumes that San Diego County
19 Water Authority's ability to obtain 450,000 acre-feet of
20 water a year -- it assumes that the Authority's ability to
21 obtain 450,000 acre-feet a year from MWD; is that not
22 correct?

23 MR. SLATER: I'm sorry, Counsel.

24 MR. DOYLE: This is -- I will give you the exact line
25 here. One second.

1 Between Lines 14 and 19 on Page 17, if you do the
2 math.

3 MR. PURCELL: Perhaps you would do the math for me.

4 MR. SLATER: Measured against what? It is vague.

5 MR. DOYLE: It is measured against the 650,000
6 acre-feet that San Diego has purchased from MWD in the past.

7 MR. PURCELL: I see that number.

8 MR. DOYLE: Then I am subtracting the 200,000 acre-feet
9 of water from this transfer.

10 MR. PURCELL: Which leaves the balance of 450-?

11 MR. DOYLE: That's correct.

12 Here's my question: Can MWD today guarantee the
13 availability of 450,000 acre-feet of water to San Diego
14 County Water Authority?

15 MR. PURCELL: MWD is on record as having said they can
16 meet the demand of the member agencies.

17 MR. DOYLE: They can meet it, but could they guarantee
18 it?

19 MR. SLATER: Objection. Define guarantee.

20 CHAIRMAN BAGGETT: Please.

21 MR. DOYLE: Guarantee. Guarantee is something that is
22 promised to happen under no -- without any exceptions. Or
23 are there stipulations guaranteed?

24 MR. PURCELL: Well, guarantee is such a final word. It
25 is kind of tough to hear of something that is wholly

1 dependent on nature.

2 MR. DOYLE: Thank you.

3 Approximately how many acre-feet of water are entitled
4 to San Diego County Water Authority from MWD under its
5 preferential rights? Can you answer that?

6 MS. HASTINGS: Objection. Calls for a legal
7 conclusion.

8 CHAIRMAN BAGGETT: Can you explain? What is -- restate
9 the question.

10 MR. DOYLE: Approximately how many acre-feet of water
11 are entitled to San Diego County Water Authority from MWD
12 under its preferential rights? I would think that the --
13 one of the chief water planners in the agency should know
14 that.

15 CHAIRMAN BAGGETT: Could you answer that question?

16 MR. PURCELL: Preferential rights were around 303,000
17 acre-feet.

18 MR. DOYLE: That is approximately 15 percent of MWD's
19 supply or guaranteed supply; is that correct? Is that an
20 accurate figure?

21 MR. SLATER: Objection. Misstates the evidence.
22 There is no testimony that preferential rights equates to a
23 guaranteed supply.

24 CHAIRMAN BAGGETT: Sustained.

25 MR. DOYLE: Is that 15 percent referred to as San Diego

1 County Water Authority firm supply?

2 MR. PURCELL: My understanding is that that volume was
3 calculated based on San Diego's voting rights at
4 Metropolitan.

5 MR. DOYLE: Thank you.

6 So without this transfer, this project, San Diego
7 County Water Authority can rely only upon approximately
8 303,000 acre-feet of water from MWD, plus whatever your
9 local supply of water is? And in the EIR/EIS -- excuse me,
10 in your written testimony on Page 17 you estimate that to be
11 223,500 acre-feet.

12 So together that is what San Diego County Water
13 Authority is using to meet the projected demand of 813,000
14 acre-feet of water; is that correct?

15 MR. PURCELL: Well, if you assume that all you're going
16 to get from Metropolitan is 303-.

17 MR. DOYLE: Okay. Great.

18 So let's assume that, just hypothetically. Then would
19 San Diego County Water Authority face a significant
20 shortfall, particularly if this transfer does not go
21 forward?

22 MR. PURCELL: Again, if you assume that there are no
23 other actions taken to mitigate for that, yes.

24 MR. DOYLE: Could you clarify for us the sources of the
25 223,500 acre-feet of local supply that you have identified

1 in your written testimony on Page 17?

2 MR. PURCELL: I can't give the exact numbers because I
3 don't have them. It is probably composed of local runoff,
4 rainfall, local runoff. It's composed of reclamation, some
5 recycling. It's composed of demand management activities.

6 MR. DOYLE: Do you know approximately how many
7 acre-feet of water is used today by San Diego County Water
8 Authority from local supplies? Is it that 223,500
9 acre-feet, or is that the projected amount?

10 My understanding is that it is the projected amount.

11 MR. PURCELL: You are correct, that is the projected
12 amount.

13 MR. DOYLE: Do you know how much approximately is used
14 today?

15 MR. PURCELL: Right off the top of my head no. I have
16 to do some research.

17 MR. DOYLE: Thank you.

18 During an emergency shortage, i.e., drought or other
19 such emergency, could you explain in general the
20 Authority's priorities for distributing water during such
21 emergency? Are you familiar with those?

22 MR. PURCELL: I couldn't speculate on how that would
23 occur at this point.

24 MR. DOYLE: I guess I will ask you to -- NWF Exhibit 5,
25 which I am hopeful that your counsel has a copy of,

1 otherwise I can lend you mine.

2 MS. HASTINGS: What exhibit?

3 MR. DOYLE: NWF Exhibit 5, which is sections of the San
4 Diego County Water Authority Urban Water Management Plan of
5 2000.

6 MR. PURCELL: Okay, I am there.

7 MR. DOYLE: The very last paragraph, could you read on
8 Page 6.3, very last paragraph, could you read that first
9 sentence for me?

10 MR. PURCELL: In a water shortage emergency, it is
11 reasonably likely that the Authority's Board of Directors
12 would declare an emergency and allocate its water to meet
13 requirements for human consumption, sanitation and fire
14 protection.

15 MR. DOYLE: I know that there are a lot of other words
16 that follow this. But if I understand correctly, that
17 sentence means that in a drought emergency situation that
18 industry, industrial uses of water, would be lower on the
19 priority scale and perhaps one of the first uses to be
20 curtailed. Is that correct?

21 MR. PURCELL: What this sentence tells me is that human
22 health and safety would take priority.

23 MR. DOYLE: Also on Page 17, back to your written
24 testimony, Lines 22 and 23, it states that, quote, even in
25 future drought years it is unlikely that San Diego County

1 Water Authority would import significantly more water than
2 has been imported in past drought years.

3 Do you see that?

4 MR. PURCELL: I do.

5 MR. DOYLE: Is the -- could you tell us if the San
6 Diego County Water Authority is today pursuing a possibility
7 of other conveyance systems to bring water, to import water
8 to San Diego aside from this water transfer with IID?

9 MR. PURCELL: I assume you are referring to the study
10 that the Authority is undertaking on potential future
11 projects?

12 MR. DOYLE: Yes, I am.

13 MR. PURCELL: The Water Authority is conducting a
14 feasibility study on an aqueduct to the Colorado River.

15 MR. DOYLE: Where would that aqueduct possibly be built?

16 MR. PURCELL: The alignments, of course, are what is
17 under study. But there are three possible scenarios:
18 Alignment that is totally within the United States,
19 alignment that's totally within the Republic of Mexico and
20 an alignment that crosses back and forth, back and forth
21 across the border.

22 MR. DOYLE: So, I am confused a little bit. Because in
23 my mind that is a contradiction from your statement on Page
24 17 that we just went over on Lines 22 and 23 that even in
25 future drought years it is unlikely that San Diego County

1 Water Authority would import significantly more water than
2 has been imported in past drought years. But, in fact, the
3 Authority is pursuing and studying the possibility of
4 increased imports?

5 MR. PURCELL: I believe what we are looking at is a
6 feasibility of a potential future project. There is no
7 project as such defined.

8 MR. DOYLE: Understand that.

9 Thank you.

10 On Page 18 of your written testimony your conclusion
11 states that, quote, no additional water would be made
12 available to San Diego through this transfer. We are back
13 to this IID transfer now.

14 Is this because MWD will reduce the amount of water
15 that is currently delivered to San Diego in proportion up to
16 the 200,000 acre-feet of this transfer?

17 MR. PURCELL: San Diego would acquire an equivalent
18 amount less from Metropolitan, as would be provided by this
19 project.

20 MR. DOYLE: Are there any legal restrictions to that
21 effect that you know of, an MOU or agreement or something
22 like that?

23 MR. PURCELL: No, none that I am aware of.

24 MR. DOYLE: When the water demand in San Diego
25 increases, it will, according to your testimony on Page 17,

1 be met by increased local supply and conservation, correct?

2 MR. PURCELL: That is the goal.

3 MR. DOYLE: It is the goal.

4 Can you opine for us what happens if you fall short of
5 that goal? What would San Diego County Water Authority do
6 if you can't make up that additional water through local
7 supplies and through conservation?

8 MR. PURCELL: We would turn to Metropolitan or pursue
9 some other independent water supply.

10 MR. DOYLE: I am going to use guarantee again, but I
11 could maybe find another word if you would like, but what
12 guarantees does the San Diego County Water Authority provide
13 the public of San Diego or for that matter your member
14 agencies that you will be able to meet their water demands
15 through local supply and conservation? Do you have any sort
16 of agreements?

17 MR. PURCELL: No.

18 MR. DOYLE: So you just stated that San Diego possibly
19 could go back to MWD and ask for or beg for more
20 additional waters; is that correct?

21 MR. PURCELL: That is one scenario.

22 MR. DOYLE: Could the Authority today request
23 additional water from MWD if you needed it?

24 MR. PURCELL: Yes.

25 MR. DOYLE: So my line of reasoning is that this could

1 -- this transfer then could potentially result, potentially
2 result in an increase of water to San Diego because you just
3 stated that you could possibly get more water from MWD today
4 if you deemed it necessary?

5 MR. PURCELL: You need to remember that the transfer is
6 replacement water for water we currently are purchasing from
7 Met. So our demands on Metropolitan would reduce
8 commensurate to the transfer. So the transfer itself would
9 not be additional water.

10 MR. DOYLE: That's correct, correct.

11 I am asking you about water that is not involved in the
12 transfer. Just if today you needed more -- you receive
13 approximately 650,000 or over 600,000 acre-feet a year from
14 MWD today?

15 MR. PURCELL: That was an amount we purchased in the
16 past.

17 MR. DOYLE: In the past. I will move on.

18 Why does San Diego County Water Authority want a
19 reliable water supply?

20 MR. PURCELL: Besides the fact it is my agency's
21 mission to provide that?

22 MR. DOYLE: Uh-huh.

23 MR. PURCELL: One of the goals is to, like I say,
24 provide a safe and reliable supply to the member agencies.
25 And the other part of our mission is to provide water to

1 meet demands.

2 MR. DOYLE: To meet demands?

3 MR. PURCELL: Correct.

4 MR. DOYLE: Where do those demands come from?

5 MR. PURCELL: SANDAG. Actually, excuse me, the
6 population numbers come from SANDAG. The demand numbers
7 then are cranked out at the Water Authority based on the
8 demographic numbers provided by SANDAG.

9 MR. DOYLE: Let's put those demographic numbers aside.
10 Could you characterize for me what those projections are,
11 what those numbers are? What do they represent?

12 MR. PURCELL: It represents the amount of water that
13 would be required to meet planned development.

14 MR. DOYLE: To meet planned development?

15 MR. PURCELL: Correct.

16 MR. DOYLE: Does planned development include more
17 people, more human beings?

18 MR. PURCELL: Yes, it does.

19 MR. DOYLE: Is there a difference in your mind between
20 water that accommodates growth and water that induces
21 growth?

22 MR. PURCELL: First I need to say I think there is
23 disagreement over whether those terms are interchangeable or
24 whether they are distinct. If you are asking for my
25 personal opinion --

1 MR. DOYLE: Yes.

2 MR. PURCELL: -- I believe that they are distinct
3 terms.

4 MR. DOYLE: Could you give me a quick definition of
5 both of those terms?

6 MR. PURCELL: Accommodating would be to meet what is
7 already planned or approved. Induce would be to go beyond
8 those.

9 MR. DOYLE: What would happen to the planned growth in
10 San Diego if its transfer doesn't go through?

11 MR. PURCELL: That is hard to say. There are a number
12 of factors in play, as to whether it would continue or not.
13 You might see doubling or tripling up. People are -- there
14 is a natural increase at play in population. You just don't
15 turn off and on like a lightbulb. So some of that might
16 continue. You might see population doubling up. You might
17 see it retardant.

18 MR. DOYLE: You might see it retardant?

19 MR. PURCELL: You might. It could be anywhere.

20 MR. DOYLE: Would it be accurate to say that the
21 Metropolitan San Diego region lies in what can be referred
22 to as a semi-arid region of the United States?

23 MR. PURCELL: Yes.

24 MR. DOYLE: Do you know what the approximate total
25 annual rainfall is in San Diego?

1 MR. PURCELL: About nine inches on the average.

2 MR. DOYLE: Would it be accurate to say that San Diego
3 is a water poor community? And let me define water poor.
4 And by that I mean it has a relatively poor supply of
5 naturally occurring freshwater resources, that is including
6 groundwater resources as well as surface water resources,
7 naturally occurring lakes and ponds.

8 MR. PURCELL: Compared to something like the
9 northwest, yes, you are correct.

10 MR. DOYLE: I have a couple questions for Mr.
11 McLaughlin.

12 Mr. McLaughlin, would it be accurate to say that one of
13 the major factors that helped Metropolitan San Diego grow
14 into the city region it is today is the importation of
15 water, historically?

16 MR. MCLAUGHLIN: Yes.

17 MR. DOYLE: That is accurate.

18 Thank you.

19 Would it be fair to characterize that historically that
20 for San Diego water is part of the equation for growth, part
21 of the equation? I know there are a lot of other things.

22 MR. MCLAUGHLIN: Well, help me out by what you mean by
23 equation.

24 MR. DOYLE: It is one of the stimuli; it is one of the
25 fundamental resources.

1 MR. MCLAUGHLIN: Historically, in terms of the
2 developments of the Southwest, things like, you know,
3 automobiles, air-conditioning, water, yes.

4 MR. DOYLE: Thank you.

5 Would it be accurate to say that traffic congestion has
6 become a more prevalent phenomenon in San Diego County in
7 recent years?

8 MR. MCLAUGHLIN: I sure wish I could deny that
9 one.

10 MR. SLATER: Objection. Beyond the scope of his
11 testimony.

12 MR. DOYLE: Well, actually transportation, traffic
13 congestion has a lot of things to do with growth and air
14 quality and environmental impacts, and Mr. McLaughlin is the
15 head of planning for SANDAG.

16 CHAIRMAN BAGGETT: I understand that. We are focusing
17 here on the Salton Sea, the impacts on that, as part of the
18 hearing. You are dealing with growth. Could you focus your
19 questions a little bit.

20 MR. DOYLE: I'm dealing -- I'm not dealing with the
21 Salton Sea, Mr. Chairman, with all due respect. I'm dealing
22 with other instream beneficial uses which is part of the
23 purpose of this hearing, as I understand it.

24 MR. SLATER: Mr. Chair, if you identify an instream use
25 that is in the street in San Diego, be happy to hear about

1 it. But the purpose of this hearing is the instream or fish
2 and wildlife.

3 CHAIRMAN BAGGETT: I feel I've given you some great
4 leeway of the growth inducing impact issue, all the parties
5 here. But could you focus, moving off of transportation
6 impact on congestion on the highways. I think --

7 MR. DOYLE: I will move on from traffic congestion. I
8 believe Mr. McLaughlin already answered the question by
9 saying that he was sorry that he had to say yes to that.

10 MR. SLATER: Misstates the testimony.

11 CHAIRMAN BAGGETT: Continue, please.

12 MR. DOYLE: Thank you.

13 Is it your estimation that the population growth
14 projected for San Diego has already been planned for
15 regardless of whether this transfer occurs or not?

16 MR. MCLAUGHLIN: Yes.

17 MR. DOYLE: Been planned for. Okay.

18 Is it correct that the County of San Diego is currently
19 undergoing a general plan 2020 update today?

20 MR. MCLAUGHLIN: Yes. But for unincorporated areas.

21 MR. DOYLE: A portion of the unincorporated county does
22 lie within the San Diego County Water Authority service
23 area?

24 MR. MCLAUGHLIN: Yes.

25 MR. DOYLE: The same is true that currently SANDAG is

1 undergoing an update of its regional transportation plan; is
2 that correct?

3 MR. MCLAUGHLIN: Yes.

4 MR. DOYLE: And can you describe to me the purpose
5 and/or the need for SANDAG's regional plan effort that was
6 announced recently?

7 MR. MCLAUGHLIN: This an opportunity for me to go on
8 for about an hour and a half.

9 MR. SLATER: Objection. What plan? Regarding what?

10 CHAIRMAN BAGGETT: The name of the plan?

11 MR. DOYLE: It's called SANDAG's Regional Plan, if I am
12 not mistaken, correct?

13 MR. MCLAUGHLIN: Referring to the Regional
14 Comprehensive Plan?

15 MR. DOYLE: The Regional Comprehensive Plan.

16 MR. MCLAUGHLIN: We are in the process of preparing a
17 regional comprehensive plan.

18 MR. DOYLE: What is the purpose of that, in general

19 terms? MR. MCLAUGHLIN: To protect and maintain the
20 quality of life in the San Diego region.

21 MR. DOYLE: Will this new regional plan, regional
22 comprehensive plan, address the need of tying water
23 supplies, future water supplies, both in terms of quality
24 and quantity to planning efforts throughout the county?

25 MR. MCLAUGHLIN: The scope of this project, as you

1 probably know, Kevin, hasn't been fully defined yet. I
2 think it would be infeasible that as part of our
3 infrastructure on our analysis we wouldn't deal with the
4 water infrastructure as a component of that plan. At this
5 point it would be premature for me to speculate on the
6 outcomes of what is going to be in and out of the plan at
7 this point since we just started the process.

8 MR. DOYLE: That is fair.

9 Thank you.

10 Are you aware that San Diego County harbors globally
11 significant biological diversity?

12 MR. MCLAUGHLIN: I am aware of E.O. Wilson's one of the
13 ten hot spots in the world.

14 MR. DOYLE: Are you familiar with National Wildlife
15 Federation's Paving Paradise Report which is Exhibit 13 of
16 our submitted testimony?

17 MR. MCLAUGHLIN: Generally aware in my capacity, but I
18 haven't gone through it recently.

19 MR. DOYLE: Are you aware of the major finding of that?

20 MR. MCLAUGHLIN: Should I start to look for it?

21 MR. DOYLE: Sure. It should be very easy to find. It
22 is Exhibit 13 and on the first page after the cover. I
23 believe -- not the -- second page, then. No, no, sorry. On
24 the right-hand side, on the top there. Basically the
25 finding of this report that for the first time ever it has

1 quantified that sprawl development is the leading cause of
2 species imperilment in California.

3 MS. HASTINGS: Counsel, excuse me, but you have us on
4 the Table of Contents.

5 MR. DOYLE: Turn the page. It is on the right-hand
6 side there, first page.

7 MR. MCLAUGHLIN: Page No. 1.

8 MR. DOYLE: Basically, my question was if you're
9 familiar with that finding in this report?

10 MR. MCLAUGHLIN: As part --

11 MR. DOYLE: I am not asking if you agree with it.

12 MR. MCLAUGHLIN: That is part of that report, yes.

13 MR. DOYLE: Would you say -- could you say that San
14 Diego County has been spared from the phenomenon known as
15 sprawl development?

16 MR. MCLAUGHLIN: No.

17 MR. DOYLE: Would it be accurate to say that San Diego
18 through, whether it is the Chamber of Commerce or other
19 institutions, that San Diego promotes itself to corporations
20 as a good place to conduct business in the hope of
21 attracting businesses to locate --

22 MR. SLATER: Objection. Relevance.

23 CHAIRMAN BAGGETT: I would sustain.

24 Where are you going here? Get there, please.

25 MR. DOYLE: I am getting there, Mr. Chairman. I think

1 this is very relevant because the promotion of industrial
2 corporate businesses into a county is a -- can have impacts
3 on growth, and that is tied to water availability and water
4 quality.

5 MR. SLATER: Mr. Chair, the notice of this hearing set
6 an issue which does the transfer have an unreasonable
7 impact on fish and wildlife and other instream uses. This
8 is beyond the scope of the notice.

9 MR. OSIAS: He needs to look at the petition for
10 change. We are talking about point of diversion, place of
11 use, purpose of use. Unless there is some nexus, because
12 place of use is San Diego and corporations --

13 CHAIRMAN BAGGETT: I would sustain both objections.

14 MR. DOYLE: Mr. Chairman, the purpose of my
15 cross-examination is to help the Board understand what I
16 feel are unreasonable impacts on fish and wildlife in the
17 San Diego region. And because they are the receiver of this
18 transferred water. That is the purpose of my questioning.

19 MR. OSIAS: Instream impacts or just general?

20 MR. DOYLE: Fish and wildlife.

21 CHAIRMAN BAGGETT: I understand.

22 MR. KIRK: It is wearing on me a little bit as well.
23 At the same time we spent an hour or two talking about
24 socioeconomic impacts in Imperial Valley. Frankly, it
25 wasn't clear to me how that linked to the issue at hand

1 either. It seems as though he should be given little leeway
2 here.

3 MR. OSIAS: Move to strike that.

4 Objection to earlier evidence untimely submitted.

5 CHAIRMAN BAGGETT: I would overrule that.

6 Let's focus.

7 Mr. Kirk, he wasn't here in the first phase where we
8 distinctly held over those discussions for the second phase
9 because they were directly related to the Sea. Otherwise
10 they would come in in Phase I, on the socioeconomic issues.
11 We specifically put it this way, so we could deal with it as
12 part of that whole. That is the reason that was separated
13 out.

14 MR. KIRK: Thank you.

15 CHAIRMAN BAGGETT: It would have been in the first
16 phase otherwise. Granted, we do have quite a leeway in the
17 public trust discussion, but in the interest of time, could
18 you just get to the point of your questioning.

19 I would sustain both those objections. And how they
20 are going about promoting industrial and economic growth in
21 the development, granted they are growing. I think we made
22 that clear. It is clear on the record. There is growth.
23 Growth is occurring. So --

24 MR. DOYLE: What I would like to demonstrate for the
25 Board, Mr. Chairman, is that that growth can have impacts on

1 fish and wildlife in San Diego County.

2 CHAIRMAN BAGGETT: You also have 12 witnesses in the
3 cases in chief, and I assume you're already referring to
4 exhibits in that, and maybe that would be a more appropriate
5 time.

6 MR. DOYLE: Actually, I have only two witnesses in my
7 portion --

8 CHAIRMAN BAGGETT: I understand.

9 MR. DOYLE: -- dealing with this particular issue.

10 CHAIRMAN BAGGETT: That is sufficient. Cut to the
11 chase.

12 MR. DOYLE: Absolutely.

13 Well, I think the most relevant question that I am
14 going to ask needs to be framed by the two previous
15 questions. I'm going to ask them -- I will reask.

16 Would it be accurate to say that San Diego promotes
17 itself as a good place to conduct business in hopes of
18 attracting business or locate or relocate in San Diego?

19 MR. SLATER: Objection.

20 CHAIRMAN BAGGETT: Answer the question. It is short
21 and simple, yes or no.

22 MR. MCLAUGHLIN: Portions of San Diego's interest
23 groups promote San Diego as a good place to do business.
24 Whether general or -- the term San Diego as a whole, I'd say
25 no, but there are clearly --

1 MR. DOYLE: In fact, has not San Diego become a major
2 force in the biotechnology industry in recent years?

3 MR. MCLAUGHLIN: It's increasingly more significant
4 explainer of our economy. Whether it is a significant
5 force, I don't think I'm qualified.

6 MR. SLATER: Just so my continuing objection is noted.

7 CHAIRMAN BAGGETT: Okay. It is noted for the
8 record.

9 MR. DOYLE: Has San Diego perhaps attracted so much
10 growth that it has outgrown its current water supply?

11 MR. MCLAUGHLIN: No.

12 MR. DOYLE: Why then would San Diego want a more
13 reliable supply of water?

14 MR. MCLAUGHLIN: Well, I think there are a number of
15 reasons why you want a more reliable water supply. One
16 would be for the health, safety and welfare for the existing
17 residents within the region.

18 Two, you would want to ensure that economic prosperity
19 can be sustained in the region. Those people that currently
20 enjoy employment, get incomes from employment in the San
21 Diego region. To the extent that those businesses that are
22 dependent upon a safe and reliable water supply, I think
23 that would be important. And I assume there would be a
24 number of other reasons, but that is just as a start.

25 MR. DOYLE: So part of the reason for the reliable

1 water supply is to help accommodate projected growth?

2 MR. MCLAUGHLIN: Yes.

3 MR. DOYLE: Could you opine for us what would happen to
4 San Diego's ability to accommodate growth if the California
5 4.4 Plan was implemented today without this transfer, that
6 California is cut back to its 4.4 million acre-feet a year
7 allotment from Colorado River?

8 MS. HASTINGS: Objection. This is way beyond the scope
9 of this witness' testimony.

10 MR. MCLAUGHLIN: I was going to say no, anyway.

11 MR. DOYLE: Can I throw a hypothetical at you, then?

12 MR. MCLAUGHLIN: Sure.

13 MR. DOYLE: What would happen to San Diego's ability to
14 accommodate growth if water supplies hypothetically were cut
15 approximately in half of what they were today with no
16 additional water?

17 MR. MCLAUGHLIN: It is a question I don't feel
18 comfortable answering now without a lot more analysis and
19 thought, Kevin.

20 MR. DOYLE: Is there a difference in your mind between
21 water that accommodates growth and water that induces growth?

22 MR. MCLAUGHLIN: Yes.

23 MR. DOYLE: Could you briefly explain the differences,
24 in your mind?

25 MR. MCLAUGHLIN: It is just a personal construct of the

1 term accommodate and induce. Accommodate would be the
2 equation in terms of additional people and amount of water
3 induced would assume there would be an additive on top of
4 what you would expect from growth. Just my own observation.

5 MR. DOYLE: Back to the SANDAG's growth projections of
6 your written testimony, basically. What -- it takes -- does
7 it take into account various growth inducing or growth
8 limiting factors?

9 MR. MCLAUGHLIN: Help me out.

10 MR. DOYLE: Well, aside from demographics, such as
11 birth rates and other things, does it take into account
12 other factors, economic factors perhaps?

13 MR. MCLAUGHLIN: Economic factors, yes.

14 MR. DOYLE: Aside from the natural birth rate
15 estimations, where else do new residents to San Diego come
16 from?

17 MR. MCLAUGHLIN: From literally everywhere in the
18 world.

19 MR. DOYLE: Is water availability then a de facto
20 growth limiting tool for a region such as San Diego?

21 MR. MCLAUGHLIN: We don't have any -- from the growth
22 management strategy and growth forecasting, we don't take
23 into account any de facto growth limiting. The only thing
24 we've done in this arena is to look at what local plans and
25 policies under the scope of SANDAG's umbrella could be used

1 to limit growth. Water availability, since it doesn't fall
2 under the scope of SANDAG's roles and responsibilities was
3 not included in that package.

4 So we treat water like we do transportation
5 infrastructure or open space habitat infrastructure.

6 MR. DOYLE: I understand.

7 At the beginning of my questioning we talked about that
8 historically one of the reasons that San Diego is the city
9 that it is today is -- one of the reasons is because of the
10 importation of water, correct?

11 MR. MCLAUGHLIN: I'm assuming you're talking more than
12 just the city.

13 MR. DOYLE: Yes, I am.

14 MR. MCLAUGHLIN: This is a paid political announcement
15 for associated government. There is 17 other cities in the
16 county besides the San Diego region. I assume you're
17 referring to the region.

18 MR. DOYLE: Yes, I'm referring to the region.

19 Thank you for the clarification.

20 So based on that, and this doesn't concern the growth
21 management strategy or your growth projections. So just
22 based on that fact that water has been a historical factor
23 in the growth of the San Diego region, is not water
24 availability then a de facto growth limiting tool for a
25 region such as San Diego?

1 MR. SLATER: Objection. Asked and answered. He just
2 answered no.

3 CHAIRMAN BAGGETT: I would agree.

4 MR. DOYLE: I think he did answer no, but he was
5 referring -- I think he thought I was referring to SANDAG's
6 growth management strategy, but I wasn't. So that is why I
7 went back to lay the foundation if he --

8 CHAIRMAN BAGGETT: Rephrase the question.

9 MR. DOYLE: Is water availability then a de facto
10 growth limiting tool for regions such as San Diego?

11 MR. MCLAUGHLIN: De facto meaning?

12 MR. DOYLE: It's an inherent growth limiting tool.

13 MR. MCLAUGHLIN: I am not aware of it at least from my
14 experiences of the use of water limitations on a large
15 metropolitan region context like SANDAG de facto use of
16 water as a growth limiting tactic.

17 MR. DOYLE: What would -- would the city of San Diego
18 be as large as it is today without the importation of water?

19 MR. MCLAUGHLIN: No.

20 MR. DOYLE: Thank you very much.

21 CHAIRMAN BAGGETT: Thank you.

22 We're going to take a break in just a minute here. I
23 want to get an idea how much more cross-examination we
24 have.

25 I will definitely -- Tribes go next. In case we

1 continue this to Monday, they won't be here.
2 What about Audubon, do you have a lengthy cross?
3 MR. YATES: No.
4 CHAIRMAN BAGGETT: Do you have any?
5 MR. YATES: No.
6 CHAIRMAN BAGGETT: Maybe I'll just go down the list
7 real quick before we take a break, see where we are at.
8 Planning and Conservation League?
9 MS. DOUGLAS: Brief.
10 CHAIRMAN BAGGETT: Salton Sea.
11 MR. KIRK: Estimate 30 minutes.
12 CHAIRMAN BAGGETT: IID?
13 MR. OSIAS: I would imagine very brief.
14 CHAIRMAN BAGGETT: The Tribes?
15 MR. SHEPARD: Brief.
16 CHAIRMAN BAGGETT: Let's take a real short break, six
17 minutes or so, and then we will come back and continue.
18 (Break taken.)
19 CHAIRMAN BAGGETT: Planning and Conservation League,
20 Ms. Douglas, you are up.
21 MS. DOUGLAS: I hope this will be very brief.
22 ---oOo---
23 //
24 //
25 //

1 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

2 BY PLANNING AND CONSERVATION LEAGUE

3 BY MS. DOUGLAS

4 MS. DOUGLAS: In your opinion, and either one of you
5 can answer any of these questions, would San Diego benefit
6 from the water transfer, proposed transfer?

7 MR. PURCELL: Yes.

8 MS. DOUGLAS: In your opinion, would there be any
9 adverse environmental impact to San Diego from the transfer?

10 MR. PURCELL: No.

11 MS. DOUGLAS: Now, I know you contend the transfer is
12 not growth inducing, but it wouldn't impede growth in San
13 Diego, would it? The transfer wouldn't do anything to
14 actually impede growth in San Diego?

15 MR. PURCELL: No.

16 MS. DOUGLAS: Are you basically familiar with the
17 EIR/EIS for the water transfer?

18 MR. PURCELL: Generally.

19 MS. DOUGLAS: Are you aware that the transfer could
20 cause significant environmental impacts in Imperial County?

21 MR. PURCELL: Yes.

22 MS. DOUGLAS: Are you also aware that the transfer
23 could cause significant economic impacts in Imperial County?

24 MR. PURCELL: Yes.

25 MS. DOUGLAS: Those impacts could either come from the

1 destruction of the Sea or from potential impacts from
2 following?

3 MR. PURCELL: That's correct.

4 MS. DOUGLAS: Now, are you familiar with the purpose of
5 an environmental justice analysis?

6 MR. PURCELL: No.

7 MS. DOUGLAS: Only one page, I promise. In the
8 EIR/EIS, 3.15-1. I'm just going to read this. It might not
9 be complicated enough that you need to turn to it, although
10 you can.

11 It says here: The purpose --

12 Would you like to --

13 MR. PURCELL: You go ahead while we look it up.

14 MS. DOUGLAS: The purpose of the Environmental Justice
15 Evaluation is to determine whether the federal actions would
16 disproportionately affect minority and low income areas.

17 So with that as background, would it surprise you to
18 hear that the percentage of minority population in Imperial
19 County is about -- it is almost twice that as that of San
20 Diego?

21 MR. MCLAUGHLIN: It wouldn't surprise me.

22 MS. DOUGLAS: Would it surprise you to hear that the
23 poverty rate in Imperial County is almost twice that of San
24 Diego County?

25 MR. MCLAUGHLIN: No.

1 MS. DOUGLAS: So Imperial County basically has a higher
2 minority population and higher poverty rate than San Diego?

3 MR. MCLAUGHLIN: Right.

4 MS. DOUGLAS: It is also bearing the risk of all the
5 adverse impacts from the transfer, right, in comparison to
6 San Diego? San Diego -- you say does not?

7 MR. MCLAUGHLIN: I can't answer that.

8 MR. PURCELL: There have been impacts identified for
9 the Imperial Valley.

10 MS. DOUGLAS: And not for San Diego is your contention?

11 MR. PURCELL: That's right.

12 MS. DOUGLAS: I want to briefly outline two potential
13 outcomes of all of this and get your reaction. Assuming
14 that the transfer goes ahead with on-farm conservation and
15 the Salton Sea shrinks and maybe a hundred square miles of
16 lake bed are exposed and dust blows up and becomes airborne
17 and people's health is affected and San Diego benefits from
18 that water supply. Is that a good outcome?

19 MR. OSIAS: Objection. Compared to what?

20 MS. DOUGLAS: Compared to the no-action alternative.

21 MR. PURCELL: I believe mitigation measures have been
22 proposed that would take care of almost all of the impacts
23 in Imperial.

24 MS. DOUGLAS: If they aren't, then if the outcome is
25 as I've described it, is that a good outcome?

1 MR. PURCELL: I'm not sure that scenario would exist.

2 MS. DOUGLAS: But if it did?

3 CHAIRMAN BAGGETT: Answer the question.

4 MS. DOUGLAS: Is that a desirable outcome?

5 MR. PURCELL: No.

6 MS. DOUGLAS: Now, if on the other hand, this is again
7 a scenario, if we can assume that the transfer takes place
8 with fallowing and the worse case economic projections occur
9 and fallowing causes really severe economic impacts in
10 Imperial County which already has one of the highest poverty
11 rates in the state, and San Diego benefits from getting
12 water, is that a good outcome compared to the no-action
13 alternative?

14 MR. PURCELL: As a scenario, no.

15 MS. DOUGLAS: Do you think San Diego is paying enough
16 to IID for the water to avoid these worst case scenarios?

17 MR. PURCELL: Yes.

18 MS. DOUGLAS: Beyond paying for the water that is
19 proposed to be transferred, is San Diego taking any other
20 steps to promote economic development in Imperial County?

21 Would you like some more specific sort of questioning?
22 One time -- this is really pretty far. One time I went to a
23 hearing of the Community Advisory Commission of the IID,
24 and there was a representative from the San Diego chamber
25 there, and the representative said that the chamber is

1 somewhat assisting IID in evaluating the feasibility of a
2 new cargo airport for Imperial County.

3 Are you aware of this at all?

4 MR. PURCELL: No.

5 MR. MCLAUGHLIN: From the SANDAG end, yes. I am not
6 aware of the specific chamber comment and the circumstances,
7 but overall.

8 MS. DOUGLAS: In terms of the San Diego County Water
9 Authority, are you guys doing anything in this direction?

10 MR. PURCELL: Not that I am aware of.

11 MS. DOUGLAS: Have you heard the statement that
12 Imperial County should not just be made whole with the
13 transfer deal, but actually be left off better off than
14 before the transfer, better off than without a transfer?
15 Are you familiar with the statement?

16 MR. PURCELL: I have not heard that statement before.

17 MS. DOUGLAS: Would you agree with the statement?

18 MR. PURCELL: No.

19 MS. DOUGLAS: Thank you.

20 CHAIRMAN BAGGETT: Mr. Kirk.

21 ----oOo----

22 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

23 BY SALTON SEA AUTHORITY

24 BY MR. KIRK

25 MR. KIRK: Good afternoon. Mr. Purcell, may I call you

1 Larry for the next 20 minutes?

2 MR. PURCELL: I prefer Mr. Purcell, Mr. Kirk.

3 MR. KIRK: Mr. Purcell, you can call me Tom, though.

4 Mr. Purcell, in fact, Ms. Douglas probably cut my
5 questions a little bit back, I did want to address the --

6 CHAIRMAN BAGGETT: That's okay. We appreciate that.

7 MR. KIRK: -- EJ issue. On Page 3.1 4-5 of the
8 transfer EIR/EIS, does that section --

9 Do you have it?

10 MR. PURCELL: Page 3.15- --

11 MR. KIRK: No, 3.14, so 3.14-5.

12 CHAIRMAN BAGGETT: Socioeconomic section?

13 MR. KIRK: It is.

14 The last paragraph there, do you see that the average
15 unemployment rate described for Imperial County in 2000 was
16 26 percent?

17 MR. PURCELL: Yes.

18 MR. KIRK: And that is the highest of all California
19 counties?

20 MR. PURCELL: That is what it states.

21 MR. KIRK: And more than five times the state average
22 of 4.9 percent?

23 MR. PURCELL: Yes.

24 MR. KIRK: Perhaps one of the two of you could identify
25 for us what the unemployment rate is in San Diego County,

1 plus or minus.

2 MR. MCLAUGHLIN: Under 5, about 4.8.

3 MR. KIRK: Close to the state average. So, in fact,
4 unemployment rates are five times higher in Imperial County
5 than they are in San Diego County, thereabouts? And you
6 just heard Ms. Douglas describe to you what environmental
7 justice means. After hearing that, Mr. Purcell, would you
8 agree that there are perhaps environmental justice issues
9 with this proposed project?

10 MR. PURCELL: Yes.

11 MR. KIRK: Do you recognize that the EIR/EIS indicates
12 there are no environmental justice impacts?

13 MR. PURCELL: I was not aware of that.

14 MR. KIRK: That's, in fact, the case.

15 When you describe your role on the project, and just to
16 back up, you are the CEQA/NEPA expert for San Diego County
17 Water Authority, correct?

18 MR. PURCELL: That's correct.

19 MR. KIRK: You've got 26 years' experience, et cetera?

20 MR. PURCELL: Twenty-four.

21 MR. KIRK: Plus or minus again. Twenty-four years of
22 experience, NEPA/CEQA expert. The environmental justice,
23 then -- one of your roles as you pointed out was, in fact,
24 to ensure the adequacy of the document?

25 MR. PURCELL: Correct.

1 MR. KIRK: The environmental justice impacts based on
2 your understanding of what we described here, there may be
3 environmental justice impacts and if the document says there
4 are not, is this document adequate?

5 MR. PURCELL: You asked if there were environmental
6 justice issues, not impacts.

7 MR. KIRK: I will reask the question, if, in fact, that
8 is what I said.

9 Do you believe there are environmental justice impacts?

10 MR. PURCELL: The document says no.

11 MR. KIRK: I asked what you believe.

12 MR. PURCELL: I believe there are issues.

13 MR. KIRK: I am asking you if you believe there are
14 significant impacts associated with environmental justice.

15 MR. PURCELL: No.

16 MR. KIRK: Perhaps a couple of hypotheticals, then.

17 The aesthetic impacts, are you aware that the document
18 indicates that there are not aesthetic impacts that can't be
19 mitigated? I will restate.

20 MR. PURCELL: Please do.

21 MR. KIRK: I believe the document indicates that there
22 are less than significant impacts, and those impacts can be
23 mitigated through the relocation of shoreline facilities; is
24 that correct?

25 MR. PURCELL: That is my understanding.

1 MR. KIRK: Boat launches. Under the proposed project
2 elevations of the Sea drop by 23 feet, the Sea recedes by
3 about one to five miles; is that correct?

4 MR. PURCELL: I believe that is correct.

5 MR. KIRK: The hypothetical is if Mission Bay were to
6 drop in elevation by 23 feet, would you consider that an
7 aesthetic impact?

8 MR. PURCELL: Yes.

9 MR. KIRK: Significant one?

10 MR. PURCELL: Yes.

11 MR. KIRK: If we were to simply move boat launches down
12 23 feet, would it still be an aesthetic impact?

13 MR. PURCELL: No.

14 MR. KIRK: It still would be and aesthetic impact if we
15 were to move boat launches down as mitigation? For
16 residents -- there are residents that live along Mission Bay?

17 MR. PURCELL: Yes.

18 MR. KIRK: If the mitigation measure was simply to move
19 boat launches down to that new level in Mission Bay, 23
20 feet, would that minimize to a level of insignificance the
21 significant aesthetic impacts on shoreline residents?

22 MR. PURCELL: You would have to compare that to the
23 significance criteria.

24 MR. KIRK: In your opinion, you suggested there would,
25 in fact -- you did agree there would be aesthetic --

1 significant aesthetic impact if the elevation of Mission Bay
2 were to drop by 23 feet? You agreed to that?

3 MR. PURCELL: Yes.

4 MR. KIRK: Is that impact -- in terms of that impact --
5 what would you define as significant? What would be the
6 sensitive receptors to that significant impact?

7 MR. PURCELL: The users of the Bay, residents around
8 the Bay.

9 MR. KIRK: So we just defined one of the sensitive
10 receptors is the residents around the Bay. The elevation of
11 Mission Bay has dropped by 23 feet. Is that a significant
12 impact on the sensitive receptor?

13 MR. PURCELL: I would have to say yes.

14 MR. KIRK: Is mitigation, is acceptable mitigation to
15 bringing that level of significance down to below a level of
16 significance, moving dock facilities, public dock
17 facilities? Is that a sufficient mitigation on that
18 aesthetic impact?

19 MR. PURCELL: That might be the only feasible
20 mitigation.

21 MR. KIRK: Do you think the residents around Mission
22 Bay would consider that a feasible mitigation?

23 MR. PURCELL: Moving boat ramps? Sure, moving boats is
24 feasible.

25 MR. KIRK: Do you think they would consider that an

1 acceptable mitigation to the aesthetic impact on the
2 shorelines properties and views?

3 MR. PURCELL: Probably not.

4 MR. KIRK: What is different about the Salton Sea, Mr.
5 Purcell? What is different -- I assume you know where I am
6 going with this.

7 MR. PURCELL: I think so.

8 MR. KIRK: I can explain if you'd like. What is
9 different about the Salton Sea and residents around the
10 Salton Sea?

11 MR. PURCELL: Comparing it to Mission Bay, there is
12 less sensitive receptors.

13 MR. KIRK: In terms of numbers?

14 MR. PURCELL: Yes.

15 MR. KIRK: How many people live within a hundred feet
16 of Mission Bay?

17 MR. PURCELL: I don't know that number. I'm picturing
18 it in my mind.

19 MR. KIRK: How many people live within a hundred feet
20 of the Salton Sea?

21 MR. PURCELL: I don't know that either.

22 MR. KIRK: So you are not sure, in fact, that there are
23 fewer sensitive receptors?

24 MR. PURCELL: Pretty sure.

25 MR. KIRK: So it is just a matter of quantity. So, in

1 fact, if there are a thousand at Mission Bay and 500 at
2 Salton Sea, that is what determines whether it is a
3 significant impact or not?

4 MR. PURCELL: Again, depends on the significance
5 criteria that have been established for the particular
6 proposed action. Those significant criteria may change,
7 depending upon what you're proposing to do.

8 MR. KIRK: A similar hypothetical. This again is
9 relevance to environmental justice issues. If San Diego
10 County Water Authority constructed the project in La Jolla
11 -- are you familiar with La Jolla?

12 MR. PURCELL: Somewhat.

13 MR. KIRK: They don't let me in there very often. La
14 Jolla, high socioeconomic conditions, correct?

15 MR. PURCELL: That is what I understand.

16 MR. KIRK: They don't let you in either?

17 MR. PURCELL: No.

18 MR. KIRK: If San Diego County Water Authority were
19 expanding a facility in La Jolla, and the current facility
20 had some poor, bad odors, and the expansion of the new
21 facility had worse odors, and it affected 2- or 5,000
22 people, in La Jolla, would you consider that a significant
23 impact?

24 MR. SLATER: Objection. Ambiguous. The odor affects
25 2,000 people or 5,000 people?

1 MR. KIRK: Yes.

2 MR. PURCELL: First, I don't think we would be allowed
3 to have a facility that would give off odors in La Jolla.

4 MR. KIRK: Why?

5 MR. PURCELL: We would have taken steps to prevent
6 that.

7 MR. KIRK: If you had a facility that you wanted to
8 expand there that had odors, presumably you wouldn't be
9 allowed or you wouldn't expand the facility to increase
10 odors effecting that population; is that correct?

11 MR. SLATER: Objection. Calls for speculation.

12 MR. KIRK: It's a hypothetical.

13 MR. SLATER: Allowed by who? What? Where? When?

14 CHAIRMAN BAGGETT: It's a hypothetical. Just answer
15 the question to the best of your ability.

16 MR. PURCELL: We would have provided mitigation to
17 come up with, say, for any increased emission of odors.

18 MR. KIRK: What is different about the Salton Sea?

19 MR. PURCELL: The Salton Sea is a natural body or --
20 take that back. It is not a natural body; it is created by
21 man. But it is not a project in and of itself.

22 MR. KIRK: Is the proposed project a project?

23 MR. PURCELL: The conservation and transfer?

24 MR. KIRK: Yes.

25 MR. PURCELL: Yes.

1 MR. KIRK: Does the proposed project indicate that
2 odors may, in fact, be increased as a result of the proposed
3 project?

4 MR. PURCELL: I'd have to check the document.

5 MR. KIRK: Take my word for it. We could go through
6 this, but we have gone through the odor section before,
7 and, in fact, the document does say, and we can if you want
8 me to check the references --

9 MR. SLATER: Mercy, no.

10 MR. PURCELL: I'll accept your word on that.

11 MR. KIRK: What is the difference between the
12 hypothetical and the situation at the Salton Sea?

13 MR. PURCELL: One thing that really springs to mind is
14 scale.

15 MR. KIRK: The Salton Sea is larger and probably
16 creates more odors; is that what you mean?

17 MR. PURCELL: Well, it would be a tougher item to deal
18 with.

19 MR. KIRK: In La Jolla?

20 MR. PURCELL: No, no.

21 MR. KIRK: You mean you have to mitigate the impacts to
22 the Sea. That is a fairer point; I appreciate that. It
23 would be very difficult to mitigate the odor problems at the
24 Salton Sea if they were determined to be a significant
25 impact?

1 MR. PURCELL: Correct.

2 MR. KIRK: Moving on. Thanks, Mr. Purcell.

3 The baseline versus no project perhaps the Board here
4 thinks we are beating this to death. It is an important
5 issue, though. The baseline versus no project, if we
6 understand the testimony correctly for purposes of much of
7 this analysis and the transfer EIS/EIR, and you are very
8 familiar with the EIS/EIR, you are the San Diego County
9 Water Authority expert. You have testified about the
10 baseline and no project. Is it your understanding that the
11 baseline and the no project are conflated or the same, one
12 in the same for much of the analysis?

13 MR. PURCELL: The baseline and no-project hydrological
14 conditions are the same for much of the analysis.

15 MR. OSIAS: Objection. Ambiguous as to which
16 resource.

17 MR. KIRK: For a majority of the resources groups. An
18 example, biology; example, air quality; example,
19 aesthetics.

20 MR. PURCELL: I believe that is correct.

21 MR. KIRK: There is a notable difference, if I
22 understood your testimony earlier, and that is the baseline
23 in the no project are slightly different for the San Diego
24 subregion in terms of entitlement enforcement.

25 Is it your testimony and/or your understanding that in

1 terms of entitlement enforcement, there is secretarial
2 cutback, implementation enforcement of the 4.4 that in the
3 San Diego subregion the modeler assumed that, in fact,
4 Metropolitan would be cut back -- I will use Metropolitan
5 here; it is more appropriate -- Metropolitan would be cut
6 back, but there would be makeup water provided; is that
7 correct, so there is no net difference in deliveries to MWD
8 or to San Diego County Water Authority?

9 MR. PURCELL: You're referring to the baseline from
10 the CRA. The baseline from CRA is 5.1, 5.2 million
11 acre-feet.

12 MR. KIRK: Is the no-project 500,000 less than that, or
13 thereabout?

14 MR. PURCELL: I have to look at that.

15 MR. KIRK: But it is something less because of the
16 entitlement enforcement?

17 MR. PURCELL: I am not sure. I'd have to look.

18 MR. KIRK: Let's assume for the case that the baseline
19 and no project are different for the San Diego and for that
20 part of the California 4.4 Plan as described in the transfer
21 EIR/EIS document. In the Imperial Valley are you aware that
22 the baseline and no project are, in fact, the same, that
23 entitlement enforcement occurs under the baseline and the no
24 project?

25 MR. OSIAS: Objection. Mischaracterizes the EIR/EIS.

1 MR. KIRK: I am not sure I am. Is the no project -- is
2 the entitlement enforcement a part of the project in the no
3 project? I have heard no testimony otherwise.

4 MR. OSIAS: I disagree.

5 CHAIRMAN BAGGETT: I would overrule.

6 Answer it please.

7 MR. PURCELL: I don't know.

8 MR. KIRK: So you're not all that familiar with the
9 baseline and the no project in the document at all or just
10 general familiarity with it?

11 MR. PURCELL: I would need to review the document
12 again.

13 MR. KIRK: Rather than focus on this document, how many
14 CEQA and NEPA documents have you prepared, managed, read or
15 reviewed in your 24-year experience?

16 MR. PURCELL: Several hundred.

17 MR. KIRK: How many of those have you used a baseline
18 that is the same as the no project condition, and can you
19 identify those?

20 MR. PURCELL: I can't recall any.

21 MR. KIRK: That is the end of my questions.

22 Thank you.

23 CHAIRMAN BAGGETT: Thank you.

24 Colorado Tribes.

25 ---oOo---

1 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY
2 BY COLORADO RIVER INDIAN TRIBES
3 BY MR. SHEPARD
4 MR. SHEPARD: All of my questions are for Mr. Purcell.
5 MR. PURCELL: Lucky me.
6 MR. SHEPARD: In the course of preparing the Draft
7 EIR/EIS did you consult with the Colorado Indian River
8 Tribes or any of its agents?
9 MR. PURCELL: Personally, no.
10 MR. SHEPARD: Why not?
11 MR. PURCELL: IID is the lead agency for CEQA and the
12 Bureau of Reclamation is the lead agency for NEPA.
13 MR. SHEPARD: Do you know if IID or BOR contacted the
14 Tribes?
15 MR. PURCELL: I do not.
16 MR. SHEPARD: You testified earlier, and correct me if
17 I am wrong, that if the biological conservation measures
18 outlined in Chapter 3.2, specifically in cottonwood willow
19 and backwater habitat are not implemented there will be
20 significant impacts on those habitat types?
21 MR. PURCELL: Yes.
22 MR. SHEPARD: What provision, if any, exists if the
23 actual effects, impacts, on those habitat types are greater
24 than those anticipated?
25 MR. PURCELL: For the cottonwood willow?

1 MR. SHEPARD: Let's start with that.

2 MR. PURCELL: Where there is 372 acres currently
3 proposed, there is a monitoring component that goes along
4 with that. If there are adverse impacts to habitat and the
5 population of willow flycatcher is stable or increasing,
6 then another 372 acres of habitat would have to be created
7 and maintained.

8 MR. SHEPARD: What would be the proximity of the new --
9 is there a preference as to how close the new habitat would
10 be created to the impacted habitat?

11 MR. PURCELL: At this point those areas have not been
12 identified.

13 MR. SHEPARD: In your experience what would be
14 preferred? Would it be preferred to try to create new
15 habitat closer to the impacted area?

16 MR. PURCELL: Generally, that is the preference.

17 MR. SHEPARD: What about with backwater habitat, what
18 is the -- any provisions exist if the actual impacts are
19 greater than those projected?

20 MR. PURCELL: Not in the current mitigation plan.

21 MR. SHEPARD: Do you know why not?

22 MR. PURCELL: Forty-four acres was deemed to be
23 sufficient.

24 MR. SHEPARD: What was the basis for that?

25 MR. PURCELL: The impacts came out of modeling prepared

1 by the U.S. Bureau of Reclamation.

2 MR. SHEPARD: Did San Diego produce any sort of
3 independent analysis of those impacts?

4 MR. PURCELL: No.

5 MR. SHEPARD: Who will pay the costs of these
6 conservation measures?

7 MR. PURCELL: That is still under discussion.

8 MR. SHEPARD: What about the cost of monitoring?

9 MR. PURCELL: That is part of the discussions regarding
10 who pays.

11 MR. SHEPARD: So the final status of that will -- will
12 the final status of who pays for monitoring and mitigation
13 be resolved before the certification of EIR/EIS, to the best
14 of your knowledge?

15 MR. PURCELL: I would hope so.

16 MR. SHEPARD: Thank you.

17 CHAIRMAN BAGGETT: Thank you.

18 Mr. Osias.

19 MR. OSIAS: Thank you.

20 ----oOo----

21 CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

22 BY IMPERIAL IRRIGATION DISTRICT

23 BY MR. OSIAS

24 MR. OSIAS: Mr. Purcell, you probably have been here
25 longer than you wish and are tired. Let me start by asking

1 you a simple question.

2 When Mr. Kirk asked you a question and introduces it
3 with a statement about what is in the EIR/EIS, did you
4 assume he was being accurate?

5 MR. PURCELL: Yes.

6 MR. OSIAS: You based your answers on that?

7 MR. PURCELL: Without looking at the document myself,
8 yes.

9 MR. OSIAS: Do you recall him asking you whether you
10 would be surprised, something to that effect, that the
11 EIS/EIR says there were no -- either said no issues or no
12 impacts identified with respect to environmental justice?

13 Do you remember that question?

14 MR. PURCELL: Yes.

15 MR. OSIAS: I think you said that you didn't know that.
16 Was that your answer?

17 MR. PURCELL: I think he was referring to impacts.

18 MR. OSIAS: He said that the document said there were
19 none?

20 MR. PURCELL: Is what he said.

21 MR. OSIAS: If you look at Page 3.15-2, do you see a
22 summary chart? I don't want to go through the whole
23 section. Do you have that in front of you?

24 MR. PURCELL: I do.

25 MR. OSIAS: In fact, doesn't it identify that there are

1 potential effects on minority and low income populations in
2 the water service area of IID?

3 MR. PURCELL: It does.

4 MR. OSIAS: You didn't assume that when you were
5 answering his questions because of the way he worded that,
6 correct?

7 MR. PURCELL: Yes.

8 MR. KIRK: Object. I object to this line of reasoning.
9 This is not for the proposed project. It is related to
10 fallowing, not to the proposed project of on-farm
11 conservation.

12 CHAIRMAN BAGGETT: Could you --

13 MR. KIRK: Counsel misrepresented the --

14 MR. OSIAS: I don't represent you at all.

15 CHAIRMAN BAGGETT: Could you clarify?

16 MR. OSIAS: What is the heading in the far length
17 column that you were just looking at, Mr. Purcell?

18 MR. PURCELL: The far length column is proposed
19 projects, 300,000 acre-feet, all conservation measures.

20 MR. OSIAS: Then there is two rows under the IID water
21 service area, correct?

22 MR. PURCELL: Yes.

23 MR. OSIAS: In the second row deals with HCP2?

24 MR. PURCELL: HCP2-EJ-1.

25 MR. OSIAS: HCP2 is the fallowing alternative?

1 MR. PURCELL: Yes.

2 MR. OSIAS: The first row, what does that do?

3 MR. PURCELL: EJ-1?

4 MR. OSIAS: Yes.

5 MR. PURCELL: Potential impacts on minority and low
6 income population.

7 MR. OSIAS: That is what it says; it is under the
8 proposed project?

9 MR. PURCELL: Yes, it is.

10 MR. OSIAS: It is not the following only alternative,
11 correct?

12 MR. PURCELL: Correct.

13 MR. OSIAS: Are you aware of Mission Bay having
14 experienced in the last ten years massive bird die-offs from
15 botulism?

16 MR. PURCELL: No.

17 MR. OSIAS: Or numerous days of odor?

18 MR. PURCELL: No.

19 MR. OSIAS: When you were asked the hypothetical about
20 changes to Mission Bay, those weren't facts you were also
21 told to assume, right?

22 MR. PURCELL: It was a hypothetical.

23 MR. OSIAS: Didn't include those hypothetical facts?

24 MR. PURCELL: That's correct.

25 MR. OSIAS: Nor did it assume that Mission Bay was on a

1 path of death even under the no-project alternative? That
2 wasn't part of the hypothetical?

3 MR. PURCELL: Correct.

4 MR. OSIAS: I suppose the same question about La Jolla?

5 MR. PURCELL: Correct.

6 MR. OSIAS: When we deal with aesthetics and we talk
7 about residents living by the Sea, are you aware that some
8 people purchased homes when the Sea was many miles away,
9 lower than where it currently is?

10 MR. PURCELL: I didn't know that.

11 MR. OSIAS: You didn't factor that into your answer
12 either, did you?

13 MR. PURCELL: No.

14 MR. OSIAS: Are you aware that there were many people
15 who bought homes who've been flooded out?

16 MR. PURCELL: I was aware that the Sea has risen and
17 impacted facilities along the former shoreline.

18 MR. OSIAS: In fact, based on at least that knowledge,
19 there would be some aesthetic benefit to having the Sea
20 leave their living rooms; is that correct?

21 MR. PURCELL: Possibly.

22 MR. OSIAS: And, in fact, would there not be a benefit
23 to having the odor be farther away rather than closer?

24 MR. PURCELL: Yes.

25 MR. OSIAS: Those weren't included in the

1 cross-examination submitted to you, were they?

2 MR. PURCELL: No.

3 MR. OSIAS: I am not sure I heard right, I am also
4 tired. Counsel for the Planning and Conservation League
5 asked you two questions that I'm very interested in. One --
6 she might have asked you, and correct me if you heard a
7 different question. She might have asked you does San Diego
8 believe they are paying enough for the water. Is that the
9 question you thought she asked you?

10 MR. PURCELL: Yes.

11 MR. OSIAS: To that one you said?

12 MR. PURCELL: Yes.

13 MR. OSIAS: That question didn't include, are they
14 paying enough to pay for all mitigation necessary that's
15 been identified in the EIR. Did she ask you that question?

16 MR. PURCELL: No.

17 MR. OSIAS: The other one she asked you, again, could
18 be my fatigued ears, she asked you if you had heard that
19 some have said that Imperial should be better off, Imperial
20 Valley or Imperial County, should be better by virtue of
21 doing the deal than by not doing the deal. Did I catch her
22 question correctly?

23 MR. PURCELL: That is what I heard.

24 MR. OSIAS: And you said, no, you hadn't heard?

25 MR. PURCELL: I haven't heard that.

1 MR. OSIAS: You had or had not?

2 MR. PURCELL: Had not.

3 MR. OSIAS: Then she asked you your opinion on that; is
4 that right?

5 MR. PURCELL: I believe so.

6 MR. OSIAS: You don't think Imperial should be better
7 off by doing this deal than by not doing this deal?

8 MR. PURCELL: What was intended was that Imperial
9 should be whole, but not necessarily more than whole.

10 MR. OSIAS: If it was an exact tie, why would they do
11 the deal?

12 MR. PURCELL: Why not?

13 MR. OSIAS: Because they are not better. Do you
14 understand the question?

15 CHAIRMAN BAGGETT: Who is the witness here?

16 MR. OSIAS: In your experience, if you want someone to
17 change, are they willing to do it to preserve where they are
18 already or to change to improve?

19 MR. PURCELL: Usually they want to improve.

20 MR. OSIAS: Mr. McLaughlin, isn't it -- do I have your
21 name right?

22 MR. MCLAUGHLIN: Fine.

23 MR. OSIAS: Isn't it true that most of the food in San
24 Diego is imported?

25 MR. MCLAUGHLIN: Yes.

1 MR. OSIAS: Would you agree that having a food supply
2 is necessary to accommodate growth?

3 MR. MCCLAUGHLIN: Individually and as a population,
4 yes. It takes care of my growth as well.

5 MR. OSIAS: Can food, therefore, be used as a growth
6 limiting tool?

7 MR. MCCLAUGHLIN: Just like the other question. That is
8 not something I could opine.

9 MR. OSIAS: So we can deny people drink or we can deny
10 people food, neither of those are factors that SANDAG uses,
11 correct?

12 MR. MCCLAUGHLIN: It is not in our growth forecast.

13 MR. OSIAS: Thank you.

14 MR. ROSSMANN: That was a nice redirect.

15 CHAIRMAN BAGGETT: We should start our hearings at
16 five.

17 Redirect?

18 I would really like to try to move through these so we
19 don't have to bring two witnesses up for an hour of
20 redirect.

21 ---oOo---

22 REDIRECT EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

23 BY MS. HASTINGS

24 MS. HASTINGS: I promise we will be very quick. All my
25 questions are for Mr. Purcell.

1 Mr. Purcell, San Diego County Water Authority receives
2 water from Metropolitan Water District. Is it true that it
3 provides that water supply to both agricultural and urban
4 entities within the service area?

5 MR. PURCELL: That's correct.

6 MS. HASTINGS: Does the San Diego County Water
7 Authority have any information that its water supply is now
8 or will be deemed unreliable?

9 MR. PURCELL: No.

10 MS. HASTINGS: Does San Diego County Water Authority
11 have any information that the Metropolitan Water District
12 supply, its wholesale provider, that its water supply is now
13 or will be deemed unreliable?

14 MR. PURCELL: No.

15 MS. HASTINGS: I believe Mr. Rossmann showed you a
16 document that is an amendment to our petition, as part of
17 his cross-examination. And in that document he pointed out
18 language that discusses the fact that the water being made
19 available for this transfer would be used to accommodate
20 both existing demand and growth.

21 Do you recall that line of questioning?

22 MR. PURCELL: Yes.

23 MS. HASTINGS: Is it fair to say or -- let me restart.

24 Does the Authority have any plans whereby the water
25 that would be made available from this transfer would only

1 be distributed to households that already are in existence?

2 MR. PURCELL: No.

3 MS. HASTINGS: Thanks.

4 Mr. Purcell, are you aware that Metropolitan Water
5 District has water supplies available to it other than the
6 Colorado River Aqueduct?

7 MR. PURCELL: Yes.

8 MS. HASTINGS: Mr. Purcell, are you aware or do you
9 have any understanding of whether the Metropolitan Water
10 District has ever allocated water in accordance with
11 preferential rights?

12 MR. PURCELL: I don't believe they ever have.

13 MS. HASTINGS: Does the existence of a preferential
14 right mean that Metropolitan Water District would not supply
15 water to the San Diego County Water Authority?

16 MR. PURCELL: No.

17 MS. HASTINGS: You discussed the Authority's mission
18 statement. Isn't it true that the Authority has an
19 obligation to serve the customers within its service area?

20 MR. PURCELL: Yes.

21 MS. HASTINGS: In the event this water transfer would
22 not be approved, isn't it true that the Authority would then
23 seek other forms of water and, in fact, given your most
24 recent answer, wouldn't it be obligated to seek out other
25 forms of water supply to serve its customer?

1 MR. PURCELL: Yes.

2 MS. HASTINGS: In your opinion as a wholesale water
3 agency, isn't it not reasonable and indeed prudent for water
4 agencies to seek out or investigate the feasibility of
5 additional or alternative water supplies?

6 MR. PURCELL: Yes.

7 MS. HASTINGS: Prior San Diego County Water Authority
8 witnesses testified to some of the benefits that will be
9 arising as a result of this transfer should it be approved.
10 Are you aware that if this transfer is approved it would
11 have benefits in the San Diego County area?

12 MR. PURCELL: Yes.

13 MS. HASTINGS: Are you also aware of the fact that
14 there would be benefits in the Imperial County area?

15 MR. PURCELL: Yes.

16 MS. HASTINGS: Are you also aware that there would be
17 benefits to Metropolitan Water District and to all Southern
18 California?

19 MR. PURCELL: Yes.

20 MS. HASTINGS: Are you aware there would be benefits to
21 the entire state of California as a result of the approval
22 of this project?

23 MR. PURCELL: Yes.

24 MS. HASTINGS: Responding to the line of questions
25 regarding the Mission Bay, do you people in San Diego have a

1 reasonable expectation about the continued existence of the
2 Pacific Ocean?

3 MR. PURCELL: Yes.

4 MS. HASTINGS: I promise this is my last question.

5 UNIDENTIFIED SPEAKER: Good.

6 MS. HASTINGS: Do you have any understanding as to the
7 quantity of money that was indicated in the EIR that the San
8 Diego County Water Authority will be paying to the Imperial
9 Irrigation District on a per acre-foot basis as a result of
10 this transfer?

11 MR. PURCELL: In the EIR?

12 MS. HASTINGS: In EIR or independently do you have
13 knowledge of approximately the dollar value per acre after a
14 full ramp up, let me assume that, after ten years, assuming
15 200,000 acre-foot supply, do you have any understanding or
16 knowledge of the dollar value per acre?

17 MR. PURCELL: No.

18 MS. HASTINGS: If I told you that it was in rough
19 numbers about \$300 per acre-foot, would that be a fair
20 estimate?

21 MR. PURCELL: I believe so.

22 MS. HASTINGS: Assuming that a full ramp up after ten
23 years has been achieved, such that 200,000 acre-foot of
24 water are now being transferred from Imperial Irrigation
25 District to San Diego County Water Authority, am I correct

1 in stating that the San Diego County Water Authority will be
2 paying roughly \$60,000,000 per year to Imperial Irrigation
3 District?

4 MR. PURCELL: Yes.

5 MS. HASTINGS: If we were to multiply that number out
6 over 60 years, is it also fair to say that the San Diego
7 County Water Authority after the 60-year period would be
8 paying approximately \$4.5 billion?

9 MR. PURCELL: Yes.

10 MS. HASTINGS: That's all for my questions.

11 CHAIRMAN BAGGETT: Thank you.

12 Mr. Gilbert.

13 MR. GILBERT: No.

14 CHAIRMAN BAGGETT: Mr. Du Bois.

15 MR. DU BOIS: No.

16 CHAIRMAN BAGGETT: Mr. Rodegerdts.

17 MR. RODEGERDTS: No.

18 CHAIRMAN BAGGETT: Mr. Rossmann.

19 MR. ROSSMANN: No.

20 CHAIRMAN BAGGETT: Mr. Fletcher.

21 MR. FLETCHER: No.

22 CHAIRMAN BAGGETT: Mr. Doyle.

23 MR. DOYLE: One question.

24 ----oOo----

25 //

1 RE CROSS-EXAMINATION OF SAN DIEGO COUNTY WATER AUTHORITY

2 BY NATIONAL WILDLIFE FEDERATION

3 BY MR. DOYLE

4 MR. DOYLE: Sorry, Mr. Purcell.

5 Are you familiar with San Diego County Water
6 Authority's lawsuit versus Metropolitan Water District
7 complaint for declaratory relief?

8 MR. PURCELL: I am aware of the lawsuit.

9 MR. DOYLE: Could you characterize for us the nature of
10 that lawsuit?

11 MR. PURCELL: I have not read it, so I would not feel
12 comfortable.

13 MR. DOYLE: Does it have to do with San Diego County
14 Water Authority disputing the preferential rights from
15 Metropolitan Water District?

16 MR. PURCELL: I believe that is the general gist of
17 it.

18 MR. DOYLE: Thank you.

19 CHAIRMAN BAGGETT: Mr. Yates, Audubon.

20 Nobody is here.

21 Sierra Club.

22 Ms. Douglas.

23 MS. DOUGLAS: No.

24 CHAIRMAN BAGGETT: Mr. Kirk.

25 MR. KIRK: Waive. Pardon the pun.

1 MR. PURCELL: Thank you.

2 CHAIRMAN BAGGETT: Ms. Rossmann.

3 MR. ROSSMANN: Waive.

4 CHAIRMAN BAGGETT: Colorado Tribes.

5 MR. SHEPARD: Waive.

6 CHAIRMAN BAGGETT: IID.

7 MR. OSIAS: No questions.

8 CHAIRMAN BAGGETT: That's it. This panel is
9 dismissed.

10 I assume you have some exhibits you want to move into
11 evidence?

12 MS. HASTINGS: Actually, at this time --

13 CHAIRMAN BAGGETT: Staff.

14 MR. FECKO: No questions.

15 MS. HASTINGS: I just want to clarify that to this
16 date I understand that San Diego County Water Authority
17 Exhibits 1 through 45 have already been admitted into
18 evidence. At this time I would offer the complete copy of
19 the SANDAG economic prosperity document which is now San
20 Diego County Water Authority Exhibit 46.

21 CHAIRMAN BAGGETT: Any objection?

22 MR. FECKO: Just copies is all I will request.

23 CHAIRMAN BAGGETT: Objection.

24 No objection. So entered.

25 Very good. I certainly appreciate everyone's patience.

1 We are keeping a pretty rigorous schedule. The issues are
2 serious and very important to this Board. We just want to
3 make sure we get through all of this without going into
4 August.

5 In that regard next week we move the hearings. The
6 first three days will be at the Bonderson, our old offices.

7 MR. OSIAS: The week after?

8 CHAIRMAN BAGGETT: The week after next, 13th, 9:00.

9 UNIDENTIFIED SPEAKER: Can you give us the address?

10 CHAIRMAN BAGGETT: 901 P Street. It is just the other
11 side of the Capitol from here, 901 P. There is parking
12 adjacent.

13 9:00, we will begin with the Regional Board with Phil
14 Gruenberg, followed by Salton Sea unless someone -- I guess
15 my crystal ball says that is a day, days's worth of --

16 MR. OSIAS: Give him an hour?

17 CHAIRMAN BAGGETT: He's got an hour for that.

18 Cross-examine. I figure we have at least two hours. So
19 that way the Tribes will begin, hopefully, on the 14th in
20 the morning at 9:00.

21 Can you be here by then?

22 MR. SHEPARD: That would be great.

23 Thank you.

24 CHAIRMAN BAGGETT: Followed by the Defenders, et al. I
25 want to ask a question of the Defenders. You've got -- I

1 know there is five parties here with 12 witnesses. Is that
2 order still going to be as we have it listed?

3 If we are going to change, since we are all here right
4 now, it would be a good opportunity to maybe get out a list
5 so that everybody can be prepared for the order. Right now
6 we have five panels. Are those panels still going to remain
7 in that order?

8 MS. DOUGLAS: No.

9 CHAIRMAN BAGGETT: Come up. For all of us who stay up
10 to 11 or 12 the night before, I suspect it is more than one
11 person in this room --

12 MS. DOUGLAS: I would be more than happy to. Dr.
13 Timothy Krantz is one of PCL's witnesses. He is not
14 available on the 13th when he was scheduled to go. He is
15 available on the 14th. So that is the only change that PCL
16 has.

17 MS. DIFFERDING: Is there a chance that Salton Sea
18 Authority and the Regional Board cases will take less than a
19 day? And if so, if anyone made the effort to travel to
20 Sacramento, maybe we should plan on having someone following
21 them in the event that they don't take the entire day.
22 Maybe the coordinated cases, maybe you could have one of
23 your panels ready to go on Monday afternoon.

24 MR. FLETCHER: I am sure we can do that or opening
25 statements. I don't know how long those will take.

1 CHAIRMAN BAGGETT: We could. Opening statements will
2 take -- all five of you intend, I assume, have opening
3 statements.

4 MR. FLETCHER: Just from a coordination point of view,
5 that would be easier if we did our opening statement, and
6 that would make some time available for that day.

7 CHAIRMAN BAGGETT: If the five environmental groups,
8 NGOs, could be prepared for their opening statements on --

9 MS. DIFFERDING: How many opening statements do you
10 have?

11 CHAIRMAN BAGGETT: Five parties. I assume all five
12 will be --

13 MR. FLETCHER: That was the plan.

14 CHAIRMAN BAGGETT: Five opening statements.

15 MS. DIFFERDING: I thought in your letter you had
16 earmarked just a couple people from the beginning?

17 MR. FLETCHER: We had each earmarked time for opening
18 statements, but we broke it up. I believe IID had an
19 objection to that, and having observed the hearing I am not
20 sure that -- our purpose in doing that actually was to make
21 the presentation go more smoothly. Having observed the
22 hearing I am not sure that purpose would be accomplished by
23 breaking up the opening statements.

24 MS. DIFFERDING: So now you are talking about five
25 opening statements all at once at the beginning before your

1 first panel goes on?

2 MR. FLETCHER: Yeah. We will coordinate to the extent
3 we can.

4 CHAIRMAN BAGGETT: You've got a week, a little over a
5 week. If you could coordinate your opening statements, just
6 to save repetition and so on.

7 So how we will leave it then, we will start off with
8 Phil Gruenberg, which will be short, I suspect without lots
9 of -- who knows what cross is going to bring, followed by
10 Mr. Kirk. And if then time permits, we will begin the
11 opening statements in the order which we have unless you
12 have a different order to propose. We will start off with
13 Defenders, National Wildlife, Audubon, Sierra Club and PCL.

14 MR. OSIAS: Could we be served by Wednesday the
15 sequence, if it is going to change from what is in the
16 current?

17 CHAIRMAN BAGGETT: If the witness panels are going to
18 change, so we will not -- I think it is safe to say it will
19 the 14th before we begin your witnesses.

20 MS. DOUGLAS: I remembered that I have one more witness
21 change. Steve Horvitz is a witness for me, and I don't
22 believe he will be able to make it. So --

23 CHAIRMAN BAGGETT: On the 14th?

24 MS. DOUGLAS: Or the 13th. So I think he will not be
25 coming.

1 CHAIRMAN BAGGETT: Well --

2 MR. DOYLE: I have a witness that cannot participate in
3 the hearing that entire week, and I have a suggestion or
4 actually request that I have in writing which I will give to
5 you and serve to all the parties.

6 CHAIRMAN BAGGETT: That will be appreciated.

7 MR. DOYLE: It is basically requesting a replacement
8 witness basically testifying to the same testimony.

9 CHAIRMAN BAGGETT: Why don't you send the letter. The
10 request, he wants to replace a witness because that week
11 will not work for the witness we wanted. To testify to the
12 same --

13 MR. OSIAS: To the same thing?

14 CHAIRMAN BAGGETT: To the same thing.

15 MR. OSIAS: As long as we have enough time to get
16 ready.

17 CHAIRMAN BAGGETT: As long as we have enough time in
18 concept I doubt there is an objection to that.

19 MS. HASTINGS: Just a --

20 MR. DOYLE: I will serve all the parties with the
21 letter.

22 CHAIRMAN BAGGETT: So you will not need any witness on
23 the 14th.

24 MR. FLETCHER: One more scheduling matter. One of my
25 witnesses, Bill Karr, is available only on the 13th and

1 14th. So if it works out, if it works out that we can
2 squeeze him in on the 14th, I'd appreciate it if we just
3 have that in mind. Obviously if it doesn't, it doesn't.

4 CHAIRMAN BAGGETT: There is some overlap on those
5 panels.

6 MR. FLETCHER: I think we can do it. I just wanted --
7 for preparation purposes I wanted to let folks know that we
8 may move Bill Karr up on the 14th because my guess is that
9 we will not be that far through those panels.

10 CHAIRMAN BAGGETT: Mr. Rodegerdts.

11 MR. RODEGERDTS: I have a city council chamber for
12 Monday and not the Bonderson Building; is that correct?

13 CHAIRMAN BAGGETT: We changed it to the Bonderson
14 Building. I arranged it so we don't have to move. So for
15 three days we will stay in the same place.

16 MR. SHEPARD: I just want to make sure I'm clear. So
17 the plan would be on Monday to have -- to do essentially, if
18 there is time, to get into environmental groups opening
19 statements, and on Tuesday interject us?

20 CHAIRMAN BAGGETT: You will not need to be there until
21 Tuesday.

22 MR. SHEPARD: Thank you.

23 MS. DIFFERDING: We then begin with the environmental
24 groups case in chief on Tuesday morning or would we -- I
25 don't think it is a good idea --

1 MR. SHEPARD: You are breaking up their case if we are
2 going to go on Tuesday, otherwise realistically we will not
3 get on Tuesday, if you want to keep their case in chief.

4 CHAIRMAN BAGGETT: Want to go through all the panels?

5 MS. DIFFERDING: The question is are we going to be
6 reversing the order and putting the coordinated cases of the
7 environmental groups before the Colorado Indian River Tribes?

8 CHAIRMAN BAGGETT: Which means you wouldn't have to be
9 here until --

10 MR. SHEPARD: Right. And that's -- I just want to -- I
11 don't want to interrupt whatever they have planned.

12 CHAIRMAN BAGGETT: Mr. Fletcher, do you have any
13 response to that?

14 MR. FLETCHER: My understanding is the same as Mr.
15 Shepard's, that we would to conserve time give our opening
16 statements on the 14th if there is a slot available for
17 them. If there is not, we won't.

18 CHAIRMAN BAGGETT: On the 13th, Monday afternoon.

19 MR. FLETCHER: My understanding of the proposal was
20 that we would give our opening statements so that the Tribes
21 wouldn't have to come up on Monday.

22 CHAIRMAN BAGGETT: Then we can interject.

23 MR. FLETCHER: We don't feel prejudiced by that if the
24 Board doesn't and other parties don't.

25 CHAIRMAN BAGGETT: I don't have a problem.

1 MR. SHEPARD: Just wanted to make sure.

2 CHAIRMAN BAGGETT: In that way we can get back to some
3 semblance.

4 MR. FECKO: Mr. Chairman, can I make a suggestion? All
5 the changes that we just have, if the parties could E-mail
6 those to us, if you made a change in your witness so we can
7 get it all squared away, and I will send out the current
8 calendars next week.

9 MR. OSIAS: Suggestion, not necessarily an objection.
10 Given the number of witnesses that will be pushed through in
11 a whole week without much of a break, that we can have
12 served on everyone by Wednesday next week the final sequence
13 so we can prepare.

14 CHAIRMAN BAGGETT: Very good. In terms of the
15 environmental package of your panels. If they are going to
16 change or you have substitutions, by next Wednesday.

17 MS. DOUGLAS: I think we will try to accommodate that.
18 My only concern is that I have at least one witness who is
19 only available on one day. So if it turns out that that
20 pushes us out of sequence, it would still be important to us
21 that he be able to testify on that date.

22 MR. OSIAS: We just want warning to. It's hard to
23 prepare cross for ten people in one night.

24 CHAIRMAN BAGGETT: Mr. Rossmann.

25 MR. ROSSMANN: I am trying to look further down the

1 schedule, your Honor, and plan our witness. I am sure the
2 Farm Bureau folks the same. I am assuming that the
3 environmental case with the cross-examination is going to
4 require whatever time it gets on the 14th and all day the
5 15th.

6 CHAIRMAN BAGGETT: And probably the 16th and afternoon
7 and --

8 MR. ROSSMANN: I just want to advise. I have a
9 planning director who's got to come up from Imperial. And I
10 guess I could fairly advise him that he can be here on the
11 16th and doesn't have to be here sooner than that.

12 CHAIRMAN BAGGETT: I think we can commit to that.

13 MR. ROSSMANN: Maybe get him up here the afternoon of
14 the 16th. I will have my other two ready to go. Just for
15 your -- my estimate of our three witnesses is I think that
16 should be wrapped up in one day with their
17 cross-examination. It shouldn't take any longer than that.
18 That is just my optimistic estimate.

19 CHAIRMAN BAGGETT: Okay.

20 MS. DIFFERDING: We are saying Imperial County no
21 sooner than 16th?

22 MR. ROSSMANN: Yes.

23 CHAIRMAN BAGGETT: Mr. Gilbert.

24 MR. GILBERT: I am in a little bit of a similar
25 situation with my witness coming from Imperial also. Can

1 you help me a little bit with a no sooner than?

2 CHAIRMAN BAGGETT: 16th I think is very safe, that
3 afternoon or morning.

4 MR. RODEGERDTS: We can zero in on that next --

5 CHAIRMAN BAGGETT: We will know by Tuesday, so you have
6 at least two or three days' notice. We see how it goes by
7 the first panel of environmental witnesses and how the
8 Salton Sea. If we can fine tune, but it will be towards the
9 end of that week, if that week at all.

10 MR. GILBERT: No sooner than Thursday afternoon.

11 Thank you.

12 CHAIRMAN BAGGETT: Anything else?

13 MR. OSIAS: Thank you.

14 CHAIRMAN BAGGETT: Thank you very much, and have a good
15 ten days.

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17 (Hearing adjourned at 5:35 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. SCHWARTZ, certify that I was the
official Court Reporter for the proceedings named herein,
and that as such reporter, I reported in verbatim shorthand
writing those proceedings;

That I thereafter caused my shorthand writing to be
reduced to typewriting, and the pages numbered 9132 through
1196 herein constitute a complete, true and correct record
of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate
at Sacramento, California, on this 15th day of May 2002.

ESTHER F. SCHWARTZ
CSR NO. 1564

