

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).

THURSDAY, MAY 16, 2002
1:30 P.M.

BONDERSON BUILDING
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR 1564

CAPITOL REPORTERS (916) 923-5447

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
RICHARD KATZ

STAFF:

TOM PELTIER
ANDREW FECKO

COUNSEL:

DANA DIFFERDING

---oOo---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

26 TOM KIRK
27 78-401 Highway 111, Suite T
28 La Quinta, California 92253
29
30 BEST BEST & KRIEGER
31 74-760 Highway 111, Suite 200
32 Indian Wells, California 92210
33 BY: ROBERT W. HARGREAVES, ESQ.

34

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPRESENTATIVES (CONT.)

FOR NATIONAL WILDLIFE FEDERATION:

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

COUNSEL:

JOHNSON & CROSS
402 West Broadway, Suite 1140
San Diego, California 91201
BY: KEVIN K. JOHNSON, ESQ.

FOR NATIONAL AUDUBON SOCIETY - CALIFORNIA:

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

FOR PLANNING AND CONSERVATION LEAGUE:

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

FOR REGIONAL WATER QUALITY CONTROL BOARD - REGION 7:

PHILIP GRUENBERG

COUNSEL:

LORI OKUN
1001 I Street
Sacramento, California 95814

SIERRA CLUB CALIFORNIA:

JIM METROPULOS
1414 K Street, Suite 500
Sacramento, California 95814

---oOo---

| | | |
|----|-------------------------------------|------|
| 1 | INDEX | |
| 2 | | PAGE |
| 3 | RESUMPTION OF HEARING: | 2082 |
| 4 | COUNTY OF IMPERIAL: | |
| 5 | OPENING STATEMENT: | |
| 6 | BY MR. ROSSMANN | 2084 |
| 7 | JURG HEUBERGER: | |
| 8 | DIRECT EXAMINATION | |
| 9 | BY MR. ROSSMANN | 2095 |
| 10 | SHARI LIBICKI: | |
| 11 | DIRECT EXAMINATION | |
| 12 | BY MR. ROSSMANN | 2101 |
| 13 | STEVEN SPICKARD: | |
| 14 | DIRECT EXAMINATION | |
| 15 | BY MR. ROSSMANN | 2108 |
| 16 | CROSS-EXAMINATION OF PANEL OF TWO: | |
| 17 | BY MR. GILBERT | 2114 |
| 18 | BY MR. DU BOIS | 2122 |
| 19 | BY MR. RODEGERDTS | 2129 |
| 20 | BY MR. FLETCHER | 2152 |
| 21 | BY MR. DOUGLAS | 2160 |
| 22 | BY MR. HARGREAVES | 2173 |
| 23 | BY MR. SLATER | 2178 |
| 24 | CROSS-EXAMINATION OF DR. LIBICKI | |
| 25 | BY MR. OSIAS | 2208 |
| 26 | BY THE BOARD | 2218 |
| 27 | BY STAFF | 2221 |
| 28 | REDIRECT EXAMINATION OF DR. LIBICKI | |
| 29 | BY MR. ROSSMANN | 2224 |
| 30 | RE CROSS OF LIBICKI: | |
| 31 | BY MR. FLETCHER | 2226 |
| 32 | BY MR. OSIAS | 2228 |

---oOo---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SACRAMENTO, CALIFORNIA

THURSDAY, MAY 16, 2002, 1:30 P.M.

---oOo---

CHAIRMAN BAGGETT: Back on the record.

County of Imperial case in chief. It is all yours, Mr. Rossmann.

MR. ROSSMANN: Before we do that --

CHAIRMAN BAGGETT: Looks like --

MR. SLATER: I actually would like to lodge a procedural objection and request for clarification, if I can, so we can keep going.

Earlier this week we were handed a copy of County of Imperial Exhibit 1A, which purports to be supplemental written testimony. And the testimony exhibits consists of essentially comments on the EIR/EIS. To the extent that they are comments lodged for the purpose of indicating that comments were made, I think that we previously discussed that this was proper to be addressed in the rebuttal phase. But to the extent that the witnesses are going to testify directly from this material, there is roughly 60 or so pages of reports, et cetera, that are being added. All of this was presented to us after the initial case in chief was put in over a month after the initial submittal date.

Counsel for Imperial County actually notified the Hearing Officer on April 1st that their testimony would be

1 in on time. They previously switched some witnesses, and we
2 didn't object to that. That is completely proper, but this
3 last minute testimony is surprise testimony and we object to
4 it if they intend to testify on material.

5 MR. ROSSMANN: Your Honor, I was going to address that
6 in my open remarks, but since the clock is not running, I
7 will address it now.

8 Our witnesses are pleased to hear that Mr. Slater does
9 want to cross-examine on this. It was presented entirely in
10 the spirit in which he spoke, as the other EIR comments from
11 other parties have been put before the Board. And as for
12 the second exhibit that is in the supplement testimony, the
13 Citizens Advisory Commission report, that is actually a
14 report originated by a commission of the Imperial Irrigation
15 District and, had the timing been better, probably would
16 have been presented by the District itself. Again, we just
17 wanted to get that into the record. I can just lay a
18 foundation to authenticate that it is what it purports to
19 be. But we were, in fact, going to make the suggestion
20 that Mr. Slater made that it was not being submitted with
21 these witnesses as being the percipient witnesses to
22 cross-examine on that material.

23 So I think that is a constructive suggestion.

24 CHAIRMAN BAGGETT: Sounds like it is.

25 MR. SLATER: If it is offered as comments that these

1 were what the comments are in the EIR, the witnesses are not
2 going to testify, with that proffer we have no problem.

3 CHAIRMAN BAGGETT: Okay. Thank you for your
4 cooperation, all of you.

5 With that --

6 MR. ROSSMANN: Before we begin, your Honor, I know that
7 we talked at the close of the day yesterday about schedule,
8 and I didn't know if we wanted to go on the record with that
9 scheduling information now while everyone is here or do that
10 at the end.

11 CHAIRMAN BAGGETT: Are all the parties -- the Tribes is
12 not here.

13 MR. ROSSMANN: They are not going to be here until
14 tomorrow, I am pretty sure.

15 CHAIRMAN BAGGETT: We can probably wait until tomorrow
16 to discuss it in the morning. It would be better. We will
17 wait and maybe I will try to print out a rough schedule so
18 you can actually have something hard to look at, we can see
19 whether it works, inputs I got and how I think you should do
20 the remainder of this hearing.

21 MR. ROSSMANN: Yes.

22 CHAIRMAN BAGGETT: Thank you.

23 MR. ROSSMANN: Formally good afternoon, Mr. Chair,
24 members of the Board staff and the fellow participants in
25 our journey.

1 The County of Imperial appears before you today to
2 present their case in chief. And in two respects if there
3 is a theme for our presentation it is that the County of
4 Imperial holds a unique position. Substantively, the County
5 holds no water right and in an earlier day, therefore, might
6 not even have had standing before this Board. And yet the
7 County of Imperial embraces within its responsibility the
8 two resources that are most at risk and that have formed the
9 focus of our hearing, irrigated agriculture in the Imperial
10 Valley as well as the Salton Sea.

11 The County also stands in the unique position of
12 bearing the brunt of a bad decision across the board if a
13 mistake is made here. We have not been part of the
14 compensation equation that has attempted to have been
15 addressed in the proposed transfer between the two
16 petitioners. And yet it is the County of Imperial and its
17 citizenry that will suffer the health and nuisance impacts
18 that even transcend the remaining public trust values that
19 are here at issue.

20 In another respect the County of Imperial holds a
21 unique position in this hearing. We did not come and still
22 to this day do not stand in this hearing with a substantive
23 position to present to this Board. As I have frequently
24 responded when asked this question by many people in this
25 room, the County of Imperial position remains a work in

1 progress. In that respect perhaps we have the greatest
2 empathy with the Board and staff. For me, personally, this
3 is the most complex proceeding I have ever been engaged in.
4 Every time we think we have our arms around the problem and
5 a way out, it is like a hydra, some new demon emerges,
6 whether it's Mexican farmers concerned about losing
7 subterranean groundwater flow or other issues that come up,
8 such as the Colorado Delta possibly competing with the
9 Salton Sea for increased Colorado River flows.

10 So we are still a work in progress. Using this
11 hearing, grateful for this hearing, grateful for the respect
12 that the Board has shown to the County of Imperial and its
13 interest, grateful for the respect that we have received
14 from the other participants. I think all of us recognize
15 that if this hearing had been held before 1983, it would be
16 vastly different than the hearing that we've had, and we are
17 appreciative of that.

18 So a large part of our case in chief has been built, if
19 you will, off the backs or out of mouths or off the pages of
20 the prior witnesses. We have asked the hard questions I
21 think of all participants in this proceeding to discern what
22 we need to know. We will hopefully, by the time our closing
23 written brief is due, try to propose some answers for this
24 Board. In the meantime, it is our responsibility to lay
25 before the Board and before the other parties the crucial

1 interests of the County of Imperial that are at stake.

2 Irrigated agriculture is important. The Salton Sea is
3 important. We cannot and do not see those in conflict with
4 each other. Future urban water needs in Imperial County are
5 important. That is the one subject that we will spend some
6 time on this afternoon that has not yet been addressed in
7 the proceedings. If there is one way to boil down the
8 County's approach, it is simply that if adverse impacts
9 cannot be avoided, they must be mitigated or compensated.
10 If that is not possible, then with Professor Thompson as our
11 witness, we agree with him this Board is obligated to deny
12 the proposed project.

13 Parenthetically, we note that if we've been talking
14 about alligators in the bathtub, there are seven of them out
15 there, six other states and the Secretary of the Interior
16 that are trying very hard to avoid endorsing no-project
17 alternative.

18 Our three witnesses this afternoon, your Honor, are Jug
19 Heuberger, Planning Director of Imperial County; Shari
20 Libicki, air quality expert; and Steve Spickard, economic
21 consultant.

22 Mr. Heuberger's testimony is going to describe
23 provisions in the County's general plan which as we know is
24 the constitution that governs the County's development. And
25 how that general plan, long before this hearing took place,

1 articulated the values that are at stake: the preservation
2 of irrigated agriculture and its \$1,000,000,000 economy,
3 the securing of a domestic water supply to meet the county
4 of origins future reasonable needs, the preservation of the
5 long-term viability of the Salton Sea and the Colorado River
6 and its riparian habitats, and above all a long-term
7 continued assured supply of water to the County.

8 In his testimony, and I say this in advance perhaps for
9 Mr. Slater's benefit, in the testimony that he originally
10 submitted in April he's going to address the very issues
11 that also formed the County's comments on the Environmental
12 Impact report. But just to reiterate, as part of our formal
13 presentation, Exhibit B to his supplemental Exhibit 1A are
14 the EIR comments, and they are submitted as previously
15 indicated to place them into the record. Similarly Exhibit
16 C to his testimony is submitted for the record, but there
17 are others in this room more competent to speak to and are
18 responsible for its comments.

19 Ms. Libicki is going to bring a unique, and we feel,
20 important qualifications to this proceeding. For many years
21 she has served as a consultant to the Imperial Valley Air
22 Pollution Control District. And her testimony will very
23 nicely supplement that of Ted Schade yesterday to explain
24 the grave risk of PM-10 emissions that are invoked by this
25 project or its alternatives. And those impacts concern, of

1 course, those that would flow from a receding Salton Sea and
2 impacts that will be stressed a little more here this
3 afternoon also from the fallowing of agricultural land, a
4 subject on which the Board has not heard testimony and on
5 which the Environmental Impact report itself is regrettably
6 silent.

7 Ms. Libicki will compare the potential problems at the
8 Salton Sea with the observed problems at both Owens Lake and
9 Mono Lake which the Board in the latter case has dealt with
10 and, in fact, to show us that Mono Lake is perhaps the
11 better analogy than Owens Lake although Owens Lake certainly
12 has lessons to teach us. She will point out that the
13 existing air quality analysis is severely deficient in two
14 respects. First, the most crucial air quality monitor for
15 these proceedings relevant to the Salton Sea, the Niland
16 east monitor, was not even used in the air quality
17 analysis. And secondly, the other monitors that were used
18 were measured somehow between the engagement of those
19 monitors and the reports in the Environmental Impact report
20 erroneous assumptions or conclusions were reported. And the
21 sum total of that consequence is that the air quality
22 impacts are vastly understated in the Environmental Impact
23 report that this Board is going to be asked to act upon.

24 Ms. Libicki will point out, and this is somewhat in
25 contrast to testimony that the Board heard yesterday that,

1 in fact, Imperial County at present is not in a state of
2 nonattainment, but for emissions that cross the county's
3 southern border from Mexico. And that, in fact, because of
4 that circumstance any new project, such as the water
5 transfer that would produce new PM-10 emissions have the
6 potential to place the county across the line and into
7 nonattainment with the consequence that the County will then
8 be required under the Clean Air Act to find compensatory
9 measures elsewhere to enable this transfer to go forward.

10 Finally, Mr. Spickard will describe his admittedly
11 brief assignment for the County, to review and evaluate the
12 existing reports on socioeconomic impacts. We make clear
13 that Mr. Spickard had neither the time nor budget to
14 undertake his own assessment and produce his independent
15 report in that respect, but that rather being engaged to
16 review Appendix G of the Environmental Impact Report and
17 also the testimony that was presented in written form by
18 principally the Imperial Irrigation District.

19 He will explain his review which is one critical of the
20 Environmental Impact Report and statement, but I think
21 somewhat affirmative and somewhat corroborative of the
22 conclusions reported by Dr. Smith. He will reiterate, as
23 will our other witnesses, that in the end what is presented
24 to the Board so far is so poorly defined that a precise
25 assessment is not possible. He will corroborate the

1 assessed valuation of real property in Imperial County, the
2 impact on that assessed valuation of reduced property values
3 and will conclude with a brief demonstration of the, if you
4 will in the broadest economic sense of the word, value of an
5 acre-foot of water in San Diego, not to suggest that that is
6 the price that San Diego should pay, but to suggest that
7 from a baseline of \$250 an acre-foot there is substantial
8 room for San Diego to meet some of the compensatory
9 requirements that may flow if this transfer is to go
10 forward.

11 That concludes my opening statement and by your leave,
12 sir, we will just begin with the presentation of the
13 witnesses, none of whom have been sworn. So I think the
14 Board may wish to do that.

15 MR. SLATER: Again, I guess I wasn't complete enough
16 with that comprehensiveness of my objection. We were also
17 served the supplemental testimony of Steven Spickard which
18 was signed or executed on May 13th, 2002, provided to us
19 earlier, again earlier this week. It is surprise testimony.
20 It is additive. It relates to subject matter just brought
21 up by counsel in his opening statement regarding value of
22 water, impacts on air quality, socioeconomic impacts, et
23 cetera, which are not covered in his initial. He has an
24 opportunity to bring this back on rebuttal. We have no
25 problem with that, but it is surprise testimony.

1 MR. ROSSMANN: Your Honor, I'm not often willing to
2 concede a point to Mr. Slater, but on this one I will point
3 out that Mr. Spickard does present in that table something
4 that was not presented in his initial statement. As we
5 pointed out, he came on to this project relatively late, and
6 we can follow that route if that is the route that counsel
7 desires. I was trying to save the necessity of his having
8 to return to the Board to describe one table and, frankly,
9 thought that the other parties might be at an advantage by
10 having that in evidence so that they can address it in their
11 rebuttals. But we are prepared to abide by the ruling of
12 the Chair in that respect.

13 CHAIRMAN BAGGETT: This is a table to which exhibit?

14 MR. ROSSMANN: Imperial Exhibit 3A.

15 MR. SLATER: Mr. Chair, the supplemental testimony we
16 received begins with -- again, it is executed -- it is not
17 clear to me whether this amends the prior testimony or is
18 additive.

19 Counsel?

20 MR. ROSSMANN: Call it a clarification.

21 CHAIRMAN BAGGETT: Where is Exhibit 3? I've got B.

22 MR. ROSSMANN: I have extra copies here.

23 CHAIRMAN BAGGETT: I am trying to make out where it
24 is. I have a copy now.

25 MR. SLATER: Mr. Chair, it appears to be somewhat

1 additive. It asserts a new point related to value of water.
2 While we do appreciate the effort to clarify what the value
3 of water is to San Diego County, it is additive and surprise
4 testimony. And we're sorry about the inconvenience.

5 CHAIRMAN BAGGETT: There is obviously no debate over --
6 procedurally it is admitted late.

7 MR. ROSSMANN: Yes, sir.

8 CHAIRMAN BAGGETT: By the rules we should not allow it.
9 I guess I cannot -- I would have to sustain the objection as
10 long as it holds.

11 Is there any way, Mr. Slater, that -- I also can
12 appreciate the challenge of having to fly a witness up here
13 to testify to one table. Do you feel it would prejudice you
14 to that extent to not have this come in and allow you the
15 opportunity in rebuttal to come back and deal with it as you
16 may?

17 MR. SLATER: If you'll allow me just a second.

18 MR. ROSSMANN: Your Honor, for the record, in facsimile
19 form, as quickly as I could get it here, I shared with this
20 Board staff.

21 CHAIRMAN BAGGETT: The parties had it.

22 MR. ROSSMANN: For two days.

23 CHAIRMAN BAGGETT: I'm just trying to expedite the
24 process.

25 MR. ROSSMANN: I appreciate that, sir.

1 CHAIRMAN BAGGETT: It might help counsel to have it
2 now. They've got two weeks to figure out how they want to
3 deal with it.

4 MR. ROSSMANN: That was our thinking, your Honor.

5 MR. OSIAS: Perhaps while they are consulting, you
6 might inquire whether anyone else objects. I will just tell
7 you I do not.

8 CHAIRMAN BAGGETT: I'm not going to be looking for
9 objections.

10 MR. OSIAS: It would be unfortunate if they came back
11 with a solution and then you heard sequentially somebody
12 else had a problem.

13 CHAIRMAN BAGGETT: Off the record.

14 (Discussion held off the record.)

15 CHAIRMAN BAGGETT: Back on the record.

16 MR. SLATER: Mr. Chair, after confirming with my
17 client, we will be pleased to allow this witness the
18 opportunity to testify on this matter. So long as we are
19 provided an opportunity to cross.

20 CHAIRMAN BAGGETT: You will have an opportunity to
21 cross and an opportunity to come back on rebuttal and
22 probably surrebuttal. I have a feeling we will be
23 discussing this table more than once before we are done.
24 With that.

25 (Oath administered by Chairman Baggett.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIRECT EXAMINATION OF COUNTY OF IMPERIAL

BY MR. ROSSMANN

MR. ROSSMANN: Mr. Heuberger, good afternoon, sir.

MR. HEUBERGER: Afternoon.

MR. ROSSMANN: Would you please state your present position?

MR. HEUBERGER: I am the Planning Director and building official for County of Imperial.

MR. ROSSMANN: How long have you held that position?

MR. HEUBERGER: I have been Planning Director and building official for 17 years for the County.

MR. ROSSMANN: For Imperial County?

MR. HEUBERGER: Yes.

MR. ROSSMANN: How long have you worked for the County of Imperial as a whole?

MR. HEUBERGER: Twenty-seven years.

MR. ROSSMANN: How did you first come to live in Imperial County?

MR. HEUBERGER: Came to the United States from Switzerland in 1960 as a young adult, approximately 12 years of age due to the fact my parents moved to Imperial Valley.

MR. ROSSMANN: What brought your parents to the Imperial Valley?

MR. HEUBERGER: My father was asked to take over a farming operation from his uncle.

1 MR. ROSSMANN: And you and your family reside in
2 Holtville?

3 MR. HEUBERGER: I live in El Centro. My parents live
4 in Holtville.

5 MR. ROSSMANN: Do you have in front of you, sir,
6 Imperial County Exhibit 1 and Exhibit 1A?

7 MR. HEUBERGER: Yes.

8 MR. ROSSMANN: Would you verify that that is your
9 written testimony in these proceedings?

10 MR. HEUBERGER: Yes, it is.

11 MR. ROSSMANN: Do you have any changes or corrections
12 to offer to that testimony?

13 MR. HEUBERGER: No, sir.

14 MR. ROSSMANN: Do you verify that that testimony is
15 true and correct to the best of your information and belief?

16 MR. HEUBERGER: Yes.

17 MR. ROSSMANN: Would you please describe the Imperial
18 County plan provisions relevant and how those provisions
19 relate to the subject of the proposed Imperial District/San
20 Diego transfer?

21 MR. HEUBERGER: You're referring to Imperial County
22 general plan?

23 MR. ROSSMANN: Yes, sir. Described in the opening
24 provisions of your testimony.

25 MR. HEUBERGER: Yes. Well, as mandated by state law

1 the County of Imperial does have a comprehensive general
2 plan which was essentially for practical terms updated, but
3 for all practical purposes an entirely new plan written for
4 1993 and updated in 1996. Much of the general plan as
5 adopted by the Board of Supervisors deals with the
6 preservation and protection of agricultural lands. We
7 have, in fact, an optional -- it is called an optional
8 element, which is an agricultural element. We also have
9 another optional element, which is called a water element
10 that we asked to be placed into the framework of mandatory
11 elements by the Board of Supervisors to address the concerns
12 they had over the water issues relative to the county and
13 also the protection and enhancement of, what's generally
14 been referred to as, the number one economic engine, which
15 is agriculture.

16 MR. ROSSMANN: What is the value of that economic
17 engine in annual dollars?

18 MR. HEUBERGER: It is generally right around a billion
19 dollars.

20 MR. ROSSMANN: Does the general plan address also the
21 County's domestic water supply?

22 MR. HEUBERGER: Yes.

23 MR. ROSSMANN: Would you please describe the County's
24 interest in that?

25 MR. HEUBERGER: Well, when we did the comprehensive

1 general plan in '93 and '96, one of the components was to,
2 as I mentioned, preserve and protect ag land, but also
3 provide for economic development for the urban areas. As a
4 result, we basically established urban development
5 boundaries, urban development areas and calculated the
6 amount of land and water that was necessary to provide that
7 type of enhanced development activity within those areas
8 without taking unnecessary ag land.

9 MR. ROSSMANN: What is the County's annual domestic
10 needs at present?

11 MR. HEUBERGER: It presently is somewhat over 60,000
12 acre-feet.

13 MR. ROSSMANN: Would you please describe projections
14 for the County's future growth and corresponding water needs?

15 MR. HEUBERGER: The -- based on the projections
16 established through the Southern California Area of
17 Governments, SCAG, through our reporting mechanism, we have
18 estimated that basically the population will increase and
19 essentially double by the year 2020, and hence the domestic
20 water needs will likewise double or more than double,
21 probably 120,000 or more.

22 MR. ROSSMANN: You reviewed the Environmental Impact
23 Report that has been prepared for this project; is that
24 correct?

25 MR. HEUBERGER: That's correct.

1 MR. ROSSMANN: Is it correct that that Environmental
2 Impact Report does not address at all the County's future
3 domestic needs?

4 MR. HEUBERGER: That was our conclusion, yes.

5 MR. ROSSMANN: Sir, let me ask you to turn to Page 9 of
6 your testimony, which summarizes the County's concerns with
7 this proposed transfer, and just take the remaining time on
8 direct examination to reiterate or restate those concerns.

9 MR. HEUBERGER: Well, essentially County was concerned
10 or is concerned, I should say, over several issues of the
11 proposed project. Probably most significantly, the
12 following, potential following components on how they would
13 affect the County. We basically concluded that the project
14 is poorly defined, difficult to assess from Environmental
15 Impact Report review standpoint and propose significant
16 potential economic negatives for the County under the
17 current analysis that was done without further answers.

18 MR. ROSSMANN: In that respect what is the County's
19 present unemployment rate?

20 MR. HEUBERGER: It varies considerably. At times it
21 is as high as 30 percent, and it has gone down over several
22 years and inclined again. At present time I believe it's
23 around 17, if I am not mistaken.

24 MR. ROSSMANN: Continuing on with the County's
25 concerns, would the Salton Sea be one of those concerns?

1 MR. HEUBERGER: Yes. The Salton Sea is a significant
2 concern, has been for quite some time. But definitely if
3 the Salton Sea were to decline in area and create
4 environmental problems for us as well as recreational loss,
5 activity loss.

6 MR. ROSSMANN: And economic impacts as well?

7 MR. HEUBERGER: Yes.

8 MR. ROSSMANN: Sir, let me ask you to verify that
9 Attachment B to your testimony on your department's
10 letterhead, the letterhead of April 25, 2002, let me ask you
11 to get that in front of you.

12 Is that, in fact, your letter submitting the County of
13 Imperial comments on the transfer EIR?

14 MR. HEUBERGER: Yes, that is a letter that we wrote and
15 presented to the Board of Supervisors for consideration and
16 approval and then sent.

17 MR. ROSSMANN: The Board of Supervisors reviewed this
18 letter before you sent it to the lead agencies?

19 MR. HEUBERGER: Yes.

20 MR. ROSSMANN: And approved its contents?

21 MR. HEUBERGER: That's correct.

22 MR. ROSSMANN: Finally, sir, Exhibits C and D, did you
23 receive these in the ordinary course of your business as
24 Planning Director? I am referring to the Community Advisory
25 Commission letter, also dated April 25th, and its

1 attachment, CIC research, revised April 9th, 2002,
2 Independent Analysis of the Economic Impact Studies?

3 MR. HEUBERGER: Yes, we did.

4 MR. ROSSMANN: To your knowledge, those are true and
5 accurate copies of those documents that you received?

6 MR. HEUBERGER: Yes, sir.

7 MR. ROSSMANN: You received those from the Imperial
8 Irrigation District?

9 MR. HEUBERGER: Yes. A copy was delivered to our
10 office by a representative of IID.

11 MR. ROSSMANN: In fact, a member of the Board of
12 Supervisors is one of the members of that commission; is
13 that correct?

14 MR. HEUBERGER: That is correct.

15 MR. ROSSMANN: Thank you very much, sir.

16 Your Honor, I presume we are presenting our witnesses
17 in panel and I'll proceed to Dr. Libicki.

18 CHAIRMAN BAGGETT: Continue.

19 MR. ROSSMANN: Dr. Libicki, would you please describe
20 to the Board your present duties in connection with the
21 County of Imperial and its air pollution control district?

22 DR. LIBICKI: I am currently working with the County
23 air pollution control district to design their state
24 implementation plan for PM-10 or the plans designed to keep
25 them in attainment but for emissions from Mexico.

1 MR. ROSSMANN: How long have you been engaged in that
2 employment, if you will, or commission in the County of
3 Imperial?

4 DR. LIBICKI: I have been working with air pollution
5 control district for about four years, the last two years of
6 which I have been working a great deal on the State
7 Implementation Plan.

8 MR. ROSSMANN: How long have you worked in the general
9 field of air quality emissions and air quality consulting?

10 DR. LIBICKI: I have been doing air quality work for
11 over 12 years. I should note that the test results are
12 coauthored by Ralph Morris who's also been working in the
13 area extensively and has been working with me in Imperial
14 County.

15 MR. ROSSMANN: In preparing what I am going to ask you
16 shortly to verify, County of Imperial Exhibit 2, you did
17 that in collaboration with Mr. Morris; is that correct?

18 DR. LIBICKI: That is correct.

19 MR. ROSSMANN: Let's get your qualifications out and
20 then we'll deal with Mr. Morris. Prior to becoming employed
21 as an air quality consultant, what prior educational
22 background preceded that?

23 DR. LIBICKI: I have a Ph.D. in chemical engineering
24 from Stanford.

25 MR. ROSSMANN: Now let's find out a little bit about

1 Mr. Morris. He, like you, he is associated with the Environ
2 Corporation?

3 DR. LIBICKI: That's correct. We are both principals
4 there.

5 MR. ROSSMANN: You are both principals in Environ
6 Corporation.

7 What is Mr. Morris' unique perspective that he brings
8 to this air quality analysis?

9 DR. LIBICKI: In addition to working with me on the
10 PM-10 State Implementation Plan for Imperial County, he also
11 spent several years working on the Owens Lake problems as
12 well.

13 MR. ROSSMANN: In your testimony -- you just stated
14 that you're working on the State Implementation Plan, and I
15 understood you to say that but for, if you will, imports
16 from Mexico, the County of Imperial County is within
17 attainment for PM-10 emissions; is that correct?

18 DR. LIBICKI: Correct.

19 MR. ROSSMANN: Who made that determination?

20 DR. LIBICKI: That determination was made by the USEPA.

21 MR. ROSSMANN: How long ago was that determination
22 made?

23 DR. LIBICKI: I believe it was late 2001.

24 MR. ROSSMANN: What are the sources of potential PM-10
25 emission that concern you arising out of the proposed

1 transfer?

2 DR. LIBICKI: There are two primary sources. One is
3 the emissive newly exposed shoreline of the Salton Sea, and
4 the second is fallowed farmland.

5 MR. ROSSMANN: Let's come to those in a moment -- check
6 that. Let's look first at fallowing. Is that an issue that
7 was addressed at all in the Environmental Impact Report?

8 DR. LIBICKI: The issue of the potential emissiveness
9 of fallowed land was addressed in the Environmental Impact
10 Report, but it was dealt with fairly summarily. In that
11 there was no evaluation of the quantity of emissions that
12 would be emitted there, other than to say that it would be a
13 general wash. It was a fairly cursory approach.

14 In addition, the other aspect that wasn't dealt with in
15 the EIR was -- the mitigation measures that were listed were
16 fairly vague and were ambiguous and didn't detail how the
17 mitigation was going to be carried out, who was going to be
18 responsible for it and how much it would cost or, in fact,
19 what the water cost of the mitigation would be, or even if
20 it could be effective.

21 MR. ROSSMANN: In respect of the assessment of
22 fallowing impacts, did not the EIR disclaim an ability to
23 quantify those impacts?

24 DR. LIBICKI: That's correct. It essentially, if you
25 will, chose not to quantify them. Said that it couldn't be

1 done.

2 MR. ROSSMANN: Is it your view that that is the case,
3 it is not possible to be done?

4 DR. LIBICKI: Certainly those calculations are
5 difficult, and there are uncertainties in them, but
6 methodologies exist that are used regularly by California
7 Resources Board.

8 MR. ROSSMANN: Let's look at the Salton Sea, then.

9 You are familiar, of course, with the work of Ted
10 Schade?

11 DR. LIBICKI: Yes, I am. I read his testimony in this
12 matter as well.

13 MR. ROSSMANN: His written testimony?

14 DR. LIBICKI: That's correct.

15 MR. ROSSMANN: Have you formed -- well, what is your
16 opinion of the testimony Mr. Schade submitted in writing?

17 DR. LIBICKI: As to his testimony on the potential for
18 emissiveness of the Salton Sea newly exposed shoreline, we
19 agree with it. We would probably add one important issue,
20 and that is that the meteorologic analysis that was done
21 around the Salton Sea didn't really give a clear picture of
22 the wind speeds around the Salton Sea. It is the most
23 important monitor, the monitor for near Niland, which was,
24 in fact, near where most of the exposed shoreline was
25 omitted from the EIR. So the highest wind speeds in which

1 relative wind speeds and directions were for some reason
2 omitted from the analysis.

3 MR. ROSSMANN: Is it not also the case that two other
4 monitors that were included in your -- captured in your
5 analysis appear to present inaccurate or incomplete
6 information?

7 DR. LIBICKI: They did in terms of how the data was
8 compiled. In addition, their description of data also
9 didn't comport with the data.

10 MR. ROSSMANN: Both of those factors, the description of
11 the existing data and elimination or the nonreporting of the
12 Niland monitor understate, in your judgment, the air quality
13 impacts from Salton Sea emissions?

14 DR. LIBICKI: That's right. The use of those -- the
15 use of the information that was presented would tend to
16 understate the impacts.

17 MR. ROSSMANN: In your judgment is the experience that
18 might be suffered at the Salton Sea comparable to the
19 experience that this Board dealt with at Mono Lake?

20 DR. LIBICKI: I think that there is really nothing
21 there to say that it won't happen. And that even if it
22 happens at only a fraction of what happened at Mono Lake or
23 Owens Lake, we still have a serious issue in Imperial County
24 because we are in attainment but for emissions transported
25 from Mexico.

1 MR. ROSSMANN: The consequence of that, if this project
2 were to cause the County to go out of attainment -- let me
3 ask you, what would be the consequences of that?

4 DR. LIBICKI: The consequences would be stricter
5 measures on every other dust emission source in the County.
6 The most obvious, the most obvious thing that is going to
7 happen is that farmers themselves will have to reduce
8 emissions and increase mitigation.

9 MR. ROSSMANN: In your analysis I notice that you did
10 not use any of the air monitors located at or near Calexico?

11 DR. LIBICKI: That's correct. There are three air
12 monitors located in Calexico. One of which, Calexico East,
13 it's been determined that that monitor was poorly sited. It
14 was sited immediately adjacent to the Border Patrol
15 activity, and rather than monitoring the ambient air, it was
16 monitoring clouds of dust raised by the Border Patrol.

17 The other two monitors wind up being impacted strongly
18 by emissions from Mexico. So while they clearly represent
19 the air quality in that area, they don't represent air
20 quality or really capture much emissions over than those
21 created by the city of Mexicali, which is a city of 1.1
22 million directly south of the border and basically adjacent
23 to Calexico.

24 MR. ROSSMANN: Thank you.

25 I think that concludes my examination.

1 Mr. Spickard, would you please describe to the Board
2 your present position and how that relates to the County of
3 Imperial?

4 Pardon me, sir, I did neglect to do an important
5 thing. Let me come back to Dr. Libicki.

6 Dr. Libicki, do you have in front of you Imperial
7 County Exhibit 2?

8 DR. LIBICKI: You mean my testimony?

9 MR. ROSSMANN: I hope that is your testimony.

10 DR. LIBICKI: Yes, I do.

11 MR. ROSSMANN: Do you have any corrections to offer to
12 that testimony?

13 DR. LIBICKI: No, I don't.

14 MR. ROSSMANN: Do you affirm that, to the best of your
15 knowledge and belief, that is true and correct?

16 DR. LIBICKI: That's correct.

17 MR. ROSSMANN: Thank you.

18 Sorry for the interruption, sir.

19 Now would you please describe for the Board your
20 qualifications and their relation to the assignment from the
21 Imperial County.

22 MR. SPICKARD: Qualifications, I've got an economics
23 and planning degree both from the University of California
24 at Berkeley. I have been working as an economist for
25 approximately 23 years with the firm Economics Research

1 Associates, and in that time have conducted quite a few
2 economic impact studies and fiscal impact studies.

3 We were retained by Imperial County to review the
4 EIR/EIS, specifically looking at the economic analysis, the
5 socioeconomic analysis, and to prepare the comments that you
6 have before you here.

7 MR. ROSSMANN: Did we also subsequently ask you to
8 review the written testimony submitted by Dr. Rodney Smith?

9 MR. SPICKARD: Yes. Actually I neglected to -- not
10 only the EIR/EIS, but a variety of other documents that have
11 been submitted recently, including those of Dr. Smith.

12 MR. ROSSMANN: Speaking of documents, let's look at
13 Paragraph 4 of your testimony, which I will not forget to
14 verify before we conclude. The second bullet item is CIC
15 research draft of March 15th, 2002. Now, Mr. Heuberger has
16 submitted a file version of that report dated April 9th,
17 2002. You have also reviewed that report, haven't you?

18 MR. SPICKARD: I have had a chance to review that one,
19 also.

20 MR. ROSSMANN: Is there any substantive difference
21 between the two reports?

22 MR. SPICKARD: I would characterize it as no
23 substantive difference. I did compare them side by side,
24 and it is essentially all the same answers. There is some
25 very minor changes in some of the estimates that they had in

1 the final report. But essentially they're the same.

2 MR. ROSSMANN: Let's go now to verify your testimony.
3 You do have in front of you Imperial Exhibit 3?

4 MR. SPICKARD: Yes.

5 MR. ROSSMANN: Also Exhibit 3A?

6 MR. SPICKARD: Yes.

7 MR. ROSSMANN: This is your written testimony in these
8 proceedings?

9 MR. SPICKARD: Yes, it is.

10 MR. ROSSMANN: Do you have any modifications to offer
11 with respect to that testimony?

12 MR. SPICKARD: The only modification is a typo in
13 Paragraph 9 of my original submittal on April 10th.

14 MR. ROSSMANN: Yes, sir.

15 MR. SPICKARD: The first line currently reads, "The
16 above questions are illustrative of existing adequacies in
17 the socioeconomic assessment." I had meant to say
18 "inadequacies." Either way it is essentially the same
19 sentence, but I was trying to emphasize more our conclusion
20 that it seemed to be inadequate.

21 MR. ROSSMANN: Thank you, sir.

22 With that correction do you affirm that, to the best of
23 your knowledge, your testimony is true and correct?

24 MR. SPICKARD: Yes.

25 MR. ROSSMANN: In a nutshell, in order to not prolong

1 our time any longer than necessary, would you summarize your
2 concerns with the materials that you were asked to review?

3 MR. SPICKARD: Well, I think it can be summarized in
4 essentially two fundamental points. The first one was that
5 the economic analysis presented in the EIR is so -- or the
6 project is so ill-defined that the economic analysis really
7 doesn't tell us much. The economic analysis says this
8 transfer program could benefit the local economy and create
9 jobs or it could hurt the local economy and remove jobs from
10 the economy. That doesn't really tell me a whole lot.

11 It seems inadequately defined as far as the transfer
12 program itself.

13 MR. ROSSMANN: If the County of Imperial asked you to
14 help the County formulate a compensation program, you'd be
15 unable to do that based on the information that has been
16 produced today?

17 MR. SPICKARD: Based on the information produced today,
18 that is correct. I would not even know if there is a
19 negative impact to be mitigated.

20 MR. ROSSMANN: Let's focus for a minute on Dr. Smith.
21 You prepared your original testimony before you were able to
22 read his testimony on socioeconomic impacts; is that
23 correct?

24 MR. SPICKARD: That's correct.

25 MR. ROSSMANN: In fact, those testimonies were

1 concurrently submitted.

2 Having reviewed -- you have to -- by the way, sir, Mr.
3 Osias is usually the one that reminds, but it's my turn
4 today. You have to say yes or no --

5 MR. SPICKARD: Yes.

6 MR. ROSSMANN: -- for the record.

7 Save him that trouble. That, by the way, applies for
8 the rest of the afternoon, so his job will be a lot easier.

9 You have -- your testimony and Dr. Smith's were
10 essentially concurrently submitted, but you have now
11 reviewed Dr. Smith's testimony?

12 MR. SPICKARD: Yes, I have.

13 MR. ROSSMANN: Is it fair to say that you essentially
14 find much to agree with in that testimony?

15 MR. SPICKARD: Yes. I think that everything that I
16 have read seems to be consistent with the standard regional
17 economic theory that my firm and I myself have applied in
18 other analyses. He seems to be speaking my language as an
19 economist, and I would concur with virtually everything of
20 his that I have read.

21 MR. ROSSMANN: His testimony, however, was not complete
22 in that it did not address fiscal impacts to those not a
23 party to the transfer; is that correct?

24 MR. SPICKARD: That is correct.

25 MR. ROSSMANN: Let's turn now that we have been granted

1 leave to attach to your Exhibit 3A an attachment to that
2 attachment. Unfortunately, we are all attached to that word
3 in these proceedings. The very last page of your testimony,
4 sir.

5 Would you explain to the Board what this attachment is
6 intended to show?

7 MR. SPICKARD: Well, the attachment was intended to
8 dramatize how large the San Diego economy is relative to its
9 need for water. Essentially we took basic economic
10 information from SANDAG on the size of the economy, in terms
11 of its gross regional product, personal incomes, the
12 employment in the County, actually even the population, and
13 divided it by the County's current water consumption to give
14 us some kind of indicators off economic volume by
15 acre-foot.

16 MR. ROSSMANN: You were not meaning by this table to
17 suggest that San Diego County should pay up to \$164,000 an
18 acre-feet for new water?

19 MR. SPICKARD: That clearly would not work.

20 MR. ROSSMANN: Is it your suggestion in this table that
21 above \$250 an acre-foot there is elasticity for San Diego to
22 reasonably pay more?

23 MR. SPICKARD: One would certainly think so, just given
24 the relative sizes of -- the relative difference here of the
25 cost of an acre-foot and the amount of product that comes

1 out of that acre-foot plus other inputs.

2 MR. ROSSMANN: You are not suggesting that water alone
3 contributes to that by any means?

4 MR. SPICKARD: Clearly water is only one of many, many
5 inputs to production. And my point here was to dramatize
6 that it is a very minor and inexpensive input to
7 production.

8 MR. ROSSMANN: But an indispensable input?

9 MR. SPICKARD: Yes. I would think water is necessary
10 certainly for population and other income producing
11 activities in the County.

12 MR. ROSSMANN: Thank you very much, sir.

13 Your Honor, that concludes our direct examination. If
14 you'll give us just a second we will set up over here.

15 CHAIRMAN BAGGETT: Let's take a five-minute break and
16 we'll come back with cross.

17 (Break taken.)

18 CHAIRMAN BAGGETT: Back on the record.

19 Cross-examination.

20 Mr. Gilbert.

21 ----oOo----

22 CROSS-EXAMINATION OF COUNTY OF IMPERIAL

23 BY MR. GILBERT

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

25 I think my questions all deal with Mr. Heuberger.

1 Good afternoon, Mr. Heuberger.

2 MR. HEUBERGER: Afternoon, Mr. Gilbert.

3 MR. GILBERT: Are you familiar with the IID Community
4 Advisory Commission and their final report? I believe that
5 was Imperial County's Exhibit 1A, Attachment C.

6 MR. HEUBERGER: Yes, sir.

7 MR. GILBERT: Are you aware of whether the membership
8 of that commission represented a broad cross-section of the
9 citizenry of the Valley?

10 MR. HEUBERGER: It seemed to, yes.

11 MR. GILBERT: I might direct you to Page 5 of that
12 Attachment C, where it describes the IID system/on-farm
13 plan. Are you aware whether there is any attachments in the
14 exhibit of the Imperial County showing a description of that
15 IID plan?

16 MR. HEUBERGER: I am sorry, an exhibit attached to
17 which?

18 MR. GILBERT: Any exhibit within that attachment that
19 describes IID's plan, the one that is referred to there as
20 IID's system/on-farm plan. If it would help, I didn't find
21 one either.

22 MR. HEUBERGER: I was going to say I didn't find one,
23 but maybe I was looking for something you weren't asking.

24 MR. GILBERT: Thank you.

25 No, I think that answers the question.

1 Not having been here during the entire hearing, I don't
2 know whether you are aware that one of my exhibits -- two of
3 my exhibits, Gilbert No. 4 and Gilbert No. 5, which were
4 introduced in Phase I of this hearing, are copies of the
5 Power Point presentation that IID made at public hearings
6 and public workshops on November 19th and December 17th of
7 last year.

8 Were you aware of that?

9 MR. HEUBERGER: I was aware IID was making
10 presentation. I don't recall seeing them personally.

11 MR. GILBERT: If I showed them to you, you wouldn't be
12 able to recognize them?

13 MR. HEUBERGER: I may or may not. I have seen a lot of
14 Power Point presentations on this project.

15 MR. GILBERT: We will dispense with that.

16 Are you aware of any engineering analysis by IID to
17 show what the result of implementing the plan might be? In
18 other words, how much water would be conserved by what type
19 of conservation measures and the scheduling of that.

20 MR. HEUBERGER: I have not seen any.

21 MR. GILBERT: Thank you.

22 Does the Community Advisory Commission final report,
23 and I guess all my questions are going to deal with that,
24 does it allude to whether that plan that we were just
25 discussing created any controversy? And if it would help I

1 would direct you to Page 7, Item No. 3, about the fourth
2 line.

3 MR. HEUBERGER: I was going to say this entire project
4 has created controversy.

5 MR. GILBERT: I wanted to be a little more specific
6 about their particular plan.

7 MR. HEUBERGER: Yes.

8 MR. GILBERT: Would you read that particular short
9 sentence.

10 MR. HEUBERGER: This plan has created a lot of
11 controversy.

12 MR. GILBERT: Thank you.

13 Could I you get you to read may the next two sentences
14 following that? That might explain why.

15 MR. HEUBERGER: The IID has been trying for years with
16 different plans to get farmers to use less water. This
17 penalizes those who were cooperating and who were frugal
18 with their water. It rewards those who used more water.

19 MR. GILBERT: Thank you.

20 On a little different subject. Is there any mention in
21 this report of the relationship of a lowered Salton Sea
22 elevation to the ability to further develop geothermal
23 resources in the vicinity of the Sea? If it would help I
24 would suggest you look at Page 8, Item No. 6.

25 MR. HEUBERGER: Yes.

1 MR. GILBERT: It does.

2 Could I direct you to Page 9, the third paragraph from
3 the very top of the page, and get you to read that paragraph
4 for us. Please.

5 MR. HEUBERGER: Third paragraph at the top of Page 9?

6 MR. GILBERT: Yes.

7 MR. HEUBERGER: It is unreasonable for Imperial Valley
8 residents to risk their businesses, livelihoods or farms to
9 transfer water to others. Therefore, it is essential that
10 we have indemnity against surprises resulting from
11 unforeseen claims to mitigate or pay for impacts to people,
12 property or the environment resulting from good faith
13 fulfillment of our contractual obligations. The IID and
14 people of Imperial Valley, including the farmers, must be
15 held harmless, quote-unquote, from any future costs of
16 litigation or judgments stemming from environmental problems
17 caused by the transfer.

18 MR. GILBERT: Do you agree with that statement?

19 MR. HEUBERGER: Yes.

20 MR. GILBERT: Going down the page just a little bit,
21 under the heading Farm Bureau Plan, a Conservation Program
22 with Transitional Fallowing and the heading Concept. The
23 last sentence of that paragraph, does it state a purpose for
24 the temporary fallowing of farmland?

25 MR. HEUBERGER: I'm sorry, I lost part of your

1 question.

2 MR. GILBERT: Do you find the short paragraph under the
3 word "Concept"?

4 MR. HEUBERGER: Yes, I do.

5 MR. GILBERT: The last sentence in that paragraph, does
6 that state a reason for the use of temporary fallowing?

7 MR. HEUBERGER: States conservation methods.

8 MR. GILBERT: That they could be financed by using
9 temporary fallowing?

10 MR. HEUBERGER: Right.

11 MR. GILBERT: If land were fallowed in the Valley and
12 the water was used either for transferring outside the
13 Valley or devoted to maintaining inflows to the Salton Sea,
14 would there be water available to develop that land for
15 domestic purposes or municipal purposes if all the water
16 that was allocated to that ground was taken away and
17 transferred out?

18 MR. HEUBERGER: If I understand your question, I think
19 the answer would be no.

20 MR. GILBERT: Do you know how much water is typically
21 used in domestic acreage in the Valley?

22 MR. HEUBERGER: Currently, you mean for urban uses?

23 MR. GILBERT: Yes.

24 MR. HEUBERGER: Currently we are using 62,000-plus
25 acre-feet.

1 MR. GILBERT: Do you have any idea how much that is per
2 acre?

3 MR. HEUBERGER: Not off the top of my head.

4 MR. GILBERT: Would it surprise you if I said it was
5 between two and three acre-feet per acre?

6 MR. HEUBERGER: No, it would not surprise me.

7 MR. GILBERT: So if the land -- if the water from the
8 land were transferred to other uses, then in order to get
9 water to develop that into municipal or domestic uses,
10 additional land would need to be fallowed or a new water
11 supply would have to be obtained somewhere; is that a fair
12 statement?

13 MR. HEUBERGER: I think that would be a fair statement.
14 However, we don't have access to any other known sources of
15 water, short of a few small ground aquifers.

16 MR. GILBERT: Isn't it true that IID is offering to
17 limit their use of Colorado River under the transfer?

18 MR. HEUBERGER: I believe that would be true.

19 MR. GILBERT: Referring now to IID's share of the costs
20 related to affecting this transfer, getting all the details
21 in place and all the work done, are you aware of which
22 segments of the Valley population are paying for those
23 costs?

24 MR. HEUBERGER: No.

25 MR. GILBERT: Would it surprise you if I said the farms

1 were paying for that expense?

2 MR. HEUBERGER: That would be a logical assumption,
3 since that is the biggest economy and biggest user of
4 water.

5 MR. GILBERT: You are not aware that the district is
6 raising electrical rates for that purpose, are you?

7 MR. HEUBERGER: I wouldn't be surprised by it.

8 MR. GILBERT: Goes to the issue of trust.

9 CHAIRMAN BAGGETT: Questions.

10 MR. GILBERT: Pardon me.

11 There was some testimony earlier and it had to do with
12 the value that might accrue to the economy of San Diego from
13 the use of water. If water were conserved by fallowing in
14 the Imperial Valley and it reduced agricultural input and
15 the result was the Valley's economy suffered, in your mind
16 and in your opinion would that be an environmental justice
17 issue?

18 MR. HEUBERGER: Possibly, yes.

19 MR. GILBERT: It is something that would have to be
20 considered, apparently?

21 MR. HEUBERGER: Yes.

22 MR. GILBERT: That is all my questions, Mr. Chairman.

23 CHAIRMAN BAGGETT: Thank you.

24 Mr. Du Bois.

25 ----oOo----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION OF COUNTY OF IMPERIAL

BY MR. DU BOIS

MR. DU BOIS: Does this mean I have 60 minutes?

CHAIRMAN BAGGETT: You want 60 minutes; that's what you got. I'm not encouraging you to use it all.

MR. ROSSMANN: Mr. Chair, Mr. Heuberger knows that this is an occupational hazard being planning director.

MR. DU BOIS: Mr. Heuberger, I'm Bill Du Bois, and I live both in Imperial and in Carmichael. And as you may be aware, although we are not well acquainted, we've both been there quite a while and run across each other's paths occasionally. And I know that you are very knowledgeable about things in Imperial because of your profession.

You do have knowledge, don't you, of quality of the water that flows into Imperial?

MR. HEUBERGER: Some, yes.

MR. DU BOIS: One thing that concerns me is that the EIR mentions that one way to keep dust down, and you may want to refer this to one of the other witnesses, they suggest sprinkling.

Do you have a conception of what might happen after land was sprinkled to keep the dust down for a few years, or even a few irrigations?

MR. HEUBERGER: Are you referring to sprinkling as the source of irrigation for farming or --

1 MR. DU BOIS: No, just to keep the dust from blowing.

2 MR. HEUBERGER: I have some thoughts what would happen
3 to things such as tie lines. I'm not sure. I'm not the
4 expert on air quality. Perhaps Ms. Libicki has comments on
5 the air quality side of it.

6 MR. DU BOIS: Let me ask Ms. Libicki if she is
7 acquainted with both the air quality and the water quality?

8 DR. LIBICKI: The air quality definitely. The water
9 quality I know it has fairly high TDS.

10 MR. DU BOIS: What I'm referring to is the approximate
11 800 parts per million TDS the water has in it. And would
12 you speculate -- and this calls for speculation. I realize
13 that.

14 MR. OSIAS: May not.

15 MR. DU BOIS: May find an objection there.

16 Do you have knowledge --

17 CHAIRMAN BAGGETT: Likewise, I don't encourage to ask
18 for objections.

19 MR. OSIAS: I don't know why he was looking at me.

20 MR. DU BOIS: What would you think would happen after
21 successive sprinklings on the land to keep the dust from
22 blowing?

23 DR. LIBICKI: In that kind of environment sprinkling is
24 actually a very odd mitigation to use strictly because it is
25 such a high evaporation rate. It isn't very effective for a

1 very long period of time. Needless to say, the TDS left
2 over would stay there and has a potential to make it more
3 emissive. That being said, I find that a very unusual
4 mitigation in this area, anyway.

5 MR. DU BOIS: I didn't want to plant ideas in your
6 head. Do you believe that there would be a salt crust that
7 developed on the top of the ground?

8 DR. LIBICKI: You know, it is not clear whether it
9 would be a salt crust or simply salt particles that could
10 later blow around. In either case it wouldn't seem to be
11 very effective, as I said, both because of its fairly
12 limited use because it simply doesn't last very long and for
13 that reason as well.

14 MR. DU BOIS: What about the salt particles collected
15 on the top of the ground, what would happen then?

16 DR. LIBICKI: That would create a fairly emissive
17 surface.

18 MR. DU BOIS: They would add to the air problem?

19 DR. LIBICKI: That's correct.

20 MR. DU BOIS: Would you speculate -- no, I think you
21 did not say that you were an expert in soils. So I won't
22 ask you a question like that.

23 Mr. Heuberger, part of your responsibilities is, or
24 your department, issues permits for construction of various
25 different activities in the Valley?

1 MR. HEUBERGER: That's correct.

2 MR. DU BOIS: Could you name some of the larger
3 manufacturers or processors in the Valley?

4 MR. HEUBERGER: Some of the larger industries, you mean?

5 MR. DU BOIS: Yes.

6 MR. HEUBERGER: Well, among the largest is the
7 geothermal industry, generating power. We currently have a
8 new beef processing plant which is a fairly large
9 operation. And we have United States Gypsum Company, which
10 is another large manufacturing company.

11 MR. DU BOIS: I think you probably named the three
12 larger water consuming activities.

13 Are there any that are -- I am not asking you to name
14 the individuals or the companies. But are there any
15 proposals before your department now that would be water
16 consumers?

17 MR. HEUBERGER: We have one or two projects, not
18 formally submitted yet, that are potentially large water
19 consumers.

20 MR. DU BOIS: They are projects of your knowledge?

21 MR. HEUBERGER: Yes.

22 MR. DU BOIS: Do you anticipate that you will have to
23 either turn down their permits or restrict them due to
24 shortage of water?

25 MR. HEUBERGER: We don't know until we analyze the

1 projects.

2 MR. DU BOIS: Have you ever had to restrict a program
3 because of water availability?

4 MR. HEUBERGER: To this point, no.

5 MR. DU BOIS: My real question is: Do you anticipate
6 that after this transfer that that might be an issue which
7 would have to be considered by your department?

8 MR. HEUBERGER: It's possible.

9 MR. DU BOIS: Right now you would say that you have a
10 great deal of flexibility as far as water quantity and
11 availability is concerned in Imperial when it comes to
12 deciding whether you can or cannot issue a permit for
13 construction? Water availability is not a factor?

14 MR. HEUBERGER: To us it hasn't. In terms of us
15 permitting projects, it has not been. However, to other
16 projects it has been an issue. Because we have been
17 perceived for projects that would potentially locate in the
18 County to have elected not to locate in the County because
19 they have perceived it, as us not having an adequate supply
20 or guaranteed supply of water.

21 MR. DU BOIS: In your mind, if this transfer becomes
22 effective and Imperial transfers out of the County another
23 3,000,000 acre-feet of water, would this reduce the
24 flexibility of the County for accepting and even encouraging
25 new industries to come to the County?

1 MR. HEUBERGER: Well, if it was 3,000,000 acre-feet,
2 yes, definitely. But I believe you might have meant 300,000
3 acre-feet. You said 3,000,000. I am not sure if you meant
4 that.

5 MR. DU BOIS: Do you anticipate it would increase the
6 flexibility for San Diego to accept new industries?

7 MR. HEUBERGER: If they have more water?

8 MR. DU BOIS: Yes.

9 MR. HEUBERGER: Yes.

10 MR. DU BOIS: I want to change to another subject now.
11 I am not sure that you will feel comfortable answering these
12 questions. If you're not, just say so.

13 Are you acquainted with a drainage system in Imperial
14 County, the farm drainage system?

15 MR. HEUBERGER: Yes, I believe I am.

16 MR. DU BOIS: Are you aware of the necessity for
17 subterranean tile lines to carry the salt out away from the
18 growing farms?

19 MR. HEUBERGER: Yes.

20 MR. DU BOIS: Are you aware of what happened in the
21 Wetlands Water District when their tile lines were -- the
22 water from their tile lines were collected in a sump that
23 collected and concentrated selenium, are you aware of that
24 incident?

25 MR. HEUBERGER: I heard about it, but I am not familiar

1 enough about it to speak about it.

2 MR. DU BOIS: I want to have your opinion of what would
3 happen to the quality of the water flowing in the drain
4 ditches in Imperial if we reduce the surface runoff into
5 those drains, the surface runoff from farming?

6 MR. ROSSMANN: Let me just interpose a mild objection.
7 I am not sure that we qualified this witness to hydrology.
8 But clearly he is free to answer if he feels qualified to
9 answer.

10 MR. DU BOIS: I was somewhat apprehensive of that
11 myself. Because I know your business has not been farming,
12 but you've certainly been aware of the farming going on.

13 CHAIRMAN BAGGETT: The witness can answer, to the best
14 of your knowledge or if you are comfortable.

15 MR. HEUBERGER: I didn't really understand your
16 question.

17 MR. DU BOIS: If you didn't, then, I think you are
18 right in considering that you are not qualified to answer
19 the question. I don't think I will pursue it any further.

20 Thank you very much.

21 That is all I have.

22 CHAIRMAN BAGGETT: Thank you.

23 Mr. Rodegerdts.

24 ----oOo----

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION OF COUNTY OF IMPERIAL
BY CALIFORNIA FARM BUREAU FEDERATION
BY MR. RODEGERDTS

MR. RODEGERDTS: Mr. Spickard, I have several questions of you. I am Henry Rodegerdts, attorney for California Farm Bureau Federation.

Taking a look at your County of Imperial Exhibit 3, which is your first written testimony submittal, that proposed testimony was quite preliminary and you there suggest that of the problems you initially found was with EIR is the suggestion that as a result of this transfer as many as 250 additional jobs could be developed or, in fact, could cause a loss of 2,460 jobs.

Since writing that, have you had an opportunity to do any analysis or reflection to come up with a reconciling of those quite different figures?

MR. SPICKARD: Those figures came directly out of the EIR document. As it turns out, the more I looked at subsequent work that had been done by CIC Research, that was part of CIC report and the work that Dr. Smith had done, they all continually referred back to that same set of numbers, the same analysis and effectively all of us are in the same position of being unable to tell or predict what the outcome of the transfer would be in terms of these jobs, this big swing in job numbers without having a more defined

1 plan for how the water would actually be conserved within
2 the Imperial Valley itself, whether it be through on-farm
3 and system programs or if it's through fallowing. And there
4 is no definition that would allow us to be any more precise
5 about the ultimate job creation or job loss.

6 MR. RODEGERDTS: In your professional work you had an
7 opportunity to review a number of environmental impact
8 reports; is that true?

9 MR. SPICKARD: That's true.

10 MR. RODEGERDTS: In view of that past experience would
11 you have expected to find a tighter analysis here of the job
12 impacts as a result of this transfer in this EIR that you
13 found?

14 MR. SPICKARD: I would have expected that, and I guess
15 I would say, again, it is not so much a flaw in the
16 analysis; it's a flaw in the definition of the project
17 itself, that it doesn't have enough specificity. The
18 analysis of the two extreme ends I think has been
19 competently done and verified independently by others. But
20 it is that definition of the program itself that seems to be
21 so ill-defined.

22 MR. RODEGERDTS: Let me ask that. Would you have
23 expected to have a more carefully defined program in such an
24 EIR?

25 MR. SPICKARD: I think I would have.

1 MR. RODEGERDTS: You suggest that or maybe it is the
2 EIR that suggests 50 percent of the payments made as a
3 result of the transfer might leak out of the County and 50
4 percent is assumed to be spent locally.

5 Is that due in part to the high degree of absentee
6 ownership that I understand that exists on the agricultural
7 lands in the County, and that is why that 50 percent leakage
8 outside of the County, that the payments might go directly
9 to the absentee landowners?

10 MR. SPICKARD: The 50/50 percent split came from the
11 EIR/EIS analysis itself. That was not something that we
12 generated in our independent review. And my understanding
13 of the EIR analysis is that it was based in part on, just as
14 you say, the concern that there is absentee land ownership,
15 but it is also based in part on being a border location and
16 applies where a fair amount of income that is earned by
17 agricultural workers will also leak out of the County.

18 MR. RODEGERDTS: You mention that on the bottom of Page
19 3 of the first proposed testimony statement that the
20 analysis assumes that crops will be fallowed in proportion
21 to historical pattern of crops grown in the Valley. But
22 then the comment the CIC reviewed is that selective
23 fallowing by type of crop based upon the most water
24 consuming crops and the value of various crops grown could
25 be used as a partial mitigation to the fallowing of some

1 land, and thereby negates some of the contemplated
2 socioeconomic impacts.

3 And my question is: Did you indicate that you did have
4 an opportunity to review Dr. Smith's report and this would
5 have been subsequent to your writing this, if I understand,
6 and it was my interpretation that Dr. Smith was of the
7 opinion that that is not what was going to happen, that this
8 selective crop selectivity after the transfer occurred would
9 not take place because of the importance of alfalfa in the
10 rotation program and that that would, in fact, continue.
11 Would you agree with that analysis and conclusion?

12 MR. SPICKARD: I did learn that or I did review that
13 analysis subsequent to this initial testimony that I put
14 together here. It's a question of agricultural economics
15 that I have to admit is outside of my expertise. But it
16 certainly seemed like a reasonable argument that Dr. Smith
17 put forward. And it is not that I would concur, but I
18 certainly have no way to argue against that statement.

19 MR. RODEGERDTS: For purpose of discussion if, in fact,
20 Dr. Smith is correct, then one could not say that a change
21 in the cropping patterns in Imperial Valley as a result of
22 transfer would result in a mitigation of the -- partial
23 mitigation of the impacts of possibly taking land out of
24 production because of fallowing?

25 MR. SPICKARD: If I understand your statement

1 correctly, yes, I think that is right.

2 MR. RODEGERDTS: Then at the conclusion of this
3 preliminary testimony you suggest that with more information
4 one could form the basis of formulating and applying
5 measures to address the impacts to third parties, put that
6 quotation in marks, of socioeconomic nature.

7 When you use that phrase "third parties," to whom were
8 you thinking of? Can you define those third parties?

9 MR. SPICKARD: I would think of them as anybody who is
10 outside of the proposed contractual arrangements for the
11 transfer, which would mean -- which would include the
12 employees of the farms. Where the farmers or farm owners
13 may be parties to the transfer agreement, the employees
14 would be third parties. The County and the other local
15 jurisdictions that may be affected through loss of tax
16 revenues, fiscal costs, they would be third parties in the
17 general population in the County.

18 MR. RODEGERDTS: Would you be prepared to extend that
19 definition to include the local social structures, the
20 schools, the churches, the civic organizations, those
21 things, those inputs, those entities, for lack of a better
22 expression, that go to make up the uniqueness of a rural,
23 small town environment in California or particularly in the
24 Imperial Valley?

25 MR. SPICKARD: I would think each of the groups of

1 people of the community have interests that you just
2 described would be third parties also.

3 MR. RODEGERDTS: Now, moving on to Exhibit 3A, which is
4 your supplemental testimony, you have an introductory
5 paragraph which I interpreted to mean that there are
6 essentially two themes in this supplemental testimony. That
7 if you want to review the mechanisms through which Imperial
8 County could be damaged fiscally by result of the proposed
9 transfer --

10 MR. ROSSMANN: Excuse me, sir, I understood you to say
11 physically, so we ought to perhaps correct that to fiscally?

12 MR. RODEGERDTS: Yes, supplemental pronunciation.
13 That didn't come out correctly.

14 And the second aspect was that it should be paid for by
15 those who benefit from the program. So let me start out by
16 asking you when you talk about the damage that might occur,
17 we are talking about or you are talking about the damage
18 that might occur by reason of a fallowing program, if that
19 might be part of this proposed transfer; is that correct?

20 MR. SPICKARD: That's correct.

21 MR. RODEGERDTS: Then you say it should be paid for by
22 those who benefit from the program. Well, in your opinion,
23 who are the beneficiaries of this proposed water transfer?

24 MR. SPICKARD: I would say the beneficiaries would be
25 those that receive cash payments and in economic terms those

1 that receive a consumer surplus. And by the latter let me
2 explain further. If somebody is buying something and is
3 very happy about having bought it, the economists would say
4 they have received even more value than they had to pay for
5 it, so they are enjoying a consumer's surplus. They are
6 thereby benefiting from a transfer as well.

7 MR. RODEGERDTS: I'm assuming you mean the object
8 you're plugging into that consumer surplus phrase is the
9 water to be transferred; is that correct?

10 MR. SPICKARD: Yes.

11 MR. RODEGERDTS: I have difficulty with that
12 characterization. For purposes of our going forward that is
13 okay.

14 That would mean one of those beneficiaries would be the
15 San Diego County Water Authority?

16 MR. SPICKARD: Yes.

17 MR. RODEGERDTS: Might we also include -- now I'm going
18 to be guilty of the same thing I just accused you of -- the
19 environmental community by reason of perhaps an enhancement
20 or at least a stabilizing of the Salton Sea levels if, in
21 fact, we implement a fallowing program, could we say that
22 the environmental community is a beneficiary of this
23 transfer?

24 MR. SPICKARD: You're starting to get outside of the
25 realm of the standard economic analysis and getting into

1 other less tangible values.

2 MR. RODEGERDTS: I know. The whole water ethic in this
3 state now is if the urbanized will pay for the water and the
4 agriculturals will pay for the water, but the environmental
5 community doesn't have to. If you want to tell me that the
6 public is the environmental community that is fine.

7 Would that be your testimony, that the public is the
8 environmental community? That takes care of your problem
9 with what I was going to say?

10 CHAIRMAN BAGGETT: You get a chance to do summation and
11 arguments later.

12 MR. RODEGERDTS: That's the problem. I wouldn't want
13 to be accused of that. I said so little up to now, Mr.
14 Chairman. Making up for lost time. You should thank your
15 lucky stars I haven't been up for cross-examination for
16 everyone, maybe.

17 CHAIRMAN BAGGETT: The question?

18 MR. RODEGERDTS: The question was --

19 MR. SPICKARD: I'm not sure I understand the question.
20 I'm not sure it fits the economical laws.

21 MR. RODEGERDTS: The Chairman is accusing me of doing
22 my closing argument so I will just move on.

23 CHAIRMAN BAGGETT: A little editorial comment there.

24 MR. RODEGERDTS: You spend a paragraph discussing one
25 of the impacts of this would be a possible reduction in

1 property values?

2 MR. SPICKARD: Yes.

3 MR. RODEGERDTS: And that would be consistent with one
4 of the points that Dr. Smith made in his testimony as well.
5 Do you recall that?

6 MR. SPICKARD: I believe he did mention that as well,
7 yes.

8 MR. RODEGERDTS: Dr. Smith also made reference to
9 several studies that were conducted in the community of
10 Mendota during the drought, a decade or two ago. Did you
11 have an opportunity to review any of those studies?

12 MR. SPICKARD: I have not had a chance to review the
13 Mendota studies.

14 MR. RODEGERDTS: On Page 3 you make the statement
15 socioeconomic impacts, on Line 5, socioeconomic impacts
16 cannot be fully measured by just the loss of jobs affecting
17 those who were formerly employed. The entire community in
18 Imperial County will bear some of the increased burden.

19 And you elaborated on that earlier, and I added
20 churches and schools and some of the other things, and my
21 understanding you concurred with this broad group of
22 impacted entities and institutions will all be considered
23 part of that socioeconomic impact. Is that correct?

24 MR. SPICKARD: That is the way I would see it.

25 MR. RODEGERDTS: On some of those things you're an

1 economist. Can some of those things be measured on the
2 graphs and charts and things that you love to throw out at
3 us?

4 MR. SPICKARD: I've never seen anybody try to measure
5 the loss, financial loss to churches, for example. It is an
6 intriguing idea. I can certainly construct a mechanism I
7 think that would corroborate what you're saying, but I've
8 never seen it quantified.

9 MR. RODEGERDTS: Some of those unquantified things
10 might be -- somewhere in here you talk domestic stress and
11 just a general heading of social problems?

12 MR. SPICKARD: Yes.

13 MR. RODEGERDTS: The increased crime, we can probably
14 measure that. Public assistance, you can measure that. Job
15 training, you can measure that. Some of those things down
16 at -- always at the bottom of the list, they're not so easy
17 to quantify, are they?

18 MR. SPICKARD: That's correct.

19 MR. RODEGERDTS: But we know they are there?

20 MR. SPICKARD: Yes.

21 MR. RODEGERDTS: At the end of that paragraph, at Line
22 14 on Page 3, you suggest that some of these things might be
23 -- the impact might be reduced by monitoring and mitigation
24 through increased funding for public programs. And then
25 insert what I think is a very key phrase.

1 After the fact, which in some instances folks would
2 argue is too late. Would you not agree?

3 MR. SPICKARD: Perhaps.

4 MR. RODEGERDTS: Later on, in fact, in the next
5 sentence you say, as alternative water conservation
6 practices that invest in infrastructure could be used to
7 ensure that jobs are not lost in the first place. And that
8 is what I'm suggesting, a mechanism whereby we can counter
9 these social problems, some of the social problems that are
10 hard to measure in the traditional, economic, scientific
11 approach, by avoiding them in the first place.

12 MR. SPICKARD: That is right.

13 MR. RODEGERDTS: Which some might suggest do we really
14 want to engage in this pursuit of this water transfer. In
15 fact, we are going to have to talk about some of these
16 socioeconomic impacts. Avoid it in the first place,
17 correct?

18 MR. ROSSMANN: I am not sure there was a question there
19 except for the word "correct." Perhaps you could try again,
20 sir.

21 MR. RODEGERDTS: If somehow we can develop --

22 CHAIRMAN BAGGETT: Sustained. His suggestion was an
23 objection.

24 MR. ROSSMANN: Yes, sir.

25 MR. RODEGERDTS: I'm trying to work around it.

1 CHAIRMAN BAGGETT: Make a question.

2 MR. RODEGERDTS: Yes.

3 In the best of all possible worlds you would concur
4 that if we can avoid these things in the first place,
5 without ever having them revisit upon us, we'd all be better
6 off?

7 MR. SPICKARD: I guess I would say, of course, the
8 statement you are saying is we would, as a society, would
9 rather not have the social problems. I would like to point
10 out that within the range of the program outcomes that were
11 evaluated in the EIR to begin with, there are those outcomes
12 where this investment in on-farm and system water
13 conservation infrastructure actually creates more employment
14 rather than reducing employment, and by those definitions it
15 avoids the social problems but still allows the water
16 transfer to occur.

17 MR. RODEGERDTS: This transfer, is it your
18 understanding, could be as long as 750 years?

19 MR. SPICKARD: That is my understanding.

20 MR. RODEGERDTS: These startup infrastructure
21 construction programs and so forth and employment that might
22 be generated by reason of that, do you have an opinion as to
23 whether that boost is likely to last three generations, the
24 full term of this contemplated water transfer?

25 MR. SPICKARD: I would have to defer to the analysis

1 that has been done by others, Dr. Smith and some of the
2 other folks, because we have not done an independent
3 analysis of those specific investments. But my
4 understanding from reviewing literature that has been
5 developed here, is that there is an ongoing need to
6 continually maintain and operate these different systems.
7 They are more capital intensive and more labor intensive
8 than current practices. So even beyond the construction of
9 these things, there are more jobs involved than just farming
10 using these technologies. That is my understanding.

11 MR. RODEGERDTS: Do you recall Dr. Smith, a sentence or
12 two in his testimony that there is also an outmigration
13 impact that some folks will just leave the area?

14 MR. SPICKARD: I don't recall exactly where that was
15 stated, so I --

16 MR. RODEGERDTS: But in your experience that sometimes
17 is a consequence of these economic impacts, folks just move
18 on?

19 MR. SPICKARD: In the event that there were, for
20 example, fallowing is a portion of the created job loss.

21 MR. RODEGERDTS: And unemployment. So rather than
22 remain on and try to find employment, rather than collect
23 unemployment, rather than undergo new job training, I'll
24 just move on?

25 MR. SPICKARD: Absolutely, that is a possibility and

1 one of the modes of behavior that the unemployed might
2 take.

3 MR. RODEGERDTS: And if in those unmeasurable to date
4 factors, that is an impact that we can't really fully get
5 ahold of, what is the impact on the whole social structure
6 of the community as we have that outmigration because the
7 plant closes down, in this instance it is the agricultural
8 plant which is also how Dr. Smith analyzed what could happen
9 in the instance such as this. The plant closes down and the
10 employees have to go elsewhere.

11 MR. SPICKARD: I think there is -- there are
12 quantifiable economic impacts and there are certainly
13 unquantifiable social impacts as well.

14 MR. RODEGERDTS: Let's move to the infamous Attachment
15 A to your supplemental testimony. This total water
16 consumption figure of 695,000 acre-feet, that doesn't
17 include the 200,000 acre-feet that is to be transferred,
18 does it?

19 MR. SPICKARD: No. My understanding is that is the
20 actual consumption in the year 2000.

21 MR. RODEGERDTS: And, in fact, depending on how one
22 looks at it, the 200,000 acre-feet that is going to be
23 transferred is already there, it is part of that 695,000
24 acre-feet of water after the fact, or is it that you don't
25 have a particular understanding of this?

1 MR. SPICKARD: I'm not sure I see how that works.

2 MR. RODEGERDTS: In any event, using your hypothetical
3 of the \$250 an acre-foot and doing the math here, that
4 leaves a -- these figures here are impressive to say the
5 least. I guess we are going to hear more about this on
6 rebuttal later. But you would agree there is quite a bit of
7 wiggle room here for the cost of what somebody ought to be
8 paying for this water ought to be greater than \$250 an
9 acre-foot; is that correct?

10 MR. SPICKARD: I would say that the implication here is
11 that there should be some wiggle room, as you call it. I
12 don't know how much.

13 MR. RODEGERDTS: You haven't been here for the other
14 testimony that we heard, but there is a lot of discussion
15 about whether or not the movement of this water to the San
16 Diego County Water Authority to create a more reliable water
17 supply is growth inducing or not.

18 Do you have an opinion on that?

19 MR. SPICKARD: I really don't have opinion on growth
20 inducing aspect of it.

21 MR. RODEGERDTS: Thank you very much.

22 CHAIRMAN BAGGETT: Thank you.

23 MR. RODEGERDTS: I'm not --

24 CHAIRMAN BAGGETT: That was just one?

25 MR. RODEGERDTS: Yes.

1 CHAIRMAN BAGGETT: Continue.

2 MR. RODEGERDTS: Mr. Heuberger, you indicate on Page 2
3 of your testimony that the County in adopting this
4 comprehensive general plan intends to guide its development,
5 enhance the future of its residents and that the general
6 plan delineates goals, policies, that the County hopes to
7 comply with; is that correct?

8 MR. HEUBERGER: That's correct.

9 MR. RODEGERDTS: I would throw out to you that the
10 County of Imperial could lose 300,000 acre-feet of water
11 that it currently has, that the Salton Sea condition could
12 change, decline, but there could be a loss of agricultural
13 production, that there could be a decline in air quality,
14 and that there could be increased unemployment and social
15 upheaval by reason of this proposed water transfer.

16 Would you be of the opinion, then, that County's
17 general plan goals are being adhered to?

18 MR. HEUBERGER: Some probably not.

19 MR. RODEGERDTS: You suggest that the County will be
20 obligated to comply with the general plan and its provisions
21 unless they are superseded by what you refer to as a higher
22 legal authority. In your opinion is this water transfer
23 being proposed by a higher legal authority?

24 MR. ROSSMANN: Objection. We haven't qualified him as
25 a legal expert, your Honor.

1 CHAIRMAN BAGGETT: Sustained.

2 MR. RODEGERDTS: He has an opinion as to what a higher
3 legal authority might be because he used that phraseology in
4 his testimony, and I am simply asking whether, as he
5 understands how this water transfer being brought about,
6 whether those who are bringing that about constitute a
7 higher legal authority as he's defined it.

8 MR. ROSSMANN: Mr. Chairman, the testimony does not
9 identify or make it -- render an opinion as to whether this
10 proceeding or any other related to it would constitute
11 higher legal authority. I think a fair characterization of
12 his testimony is that if he's got to follow someone higher
13 up, that's going to supersede the general plan.

14 CHAIRMAN BAGGETT: It seems a legitimate question you
15 are asking. What would that be? Who is higher up, since
16 you have acknowledged that that could supersede it? You can
17 answer to the best of your knowledge or to within your
18 expertise.

19 Did you have someone in mind or some authority?

20 MR. HEUBERGER: Certainly. Court order.

21 CHAIRMAN BAGGETT: Fair.

22 MR. RODEGERDTS: Thank you.

23 You tell us that goal one of the general plan is to,
24 and this is on Page 4 of your testimony, Line 24, preserve
25 commercial agriculture as a prime economic force in the

1 County.

2 Do you think that that goal will be achieved if an
3 order for this transfer goes forward and it will be
4 necessary to fallow agricultural land in the Imperial
5 Valley?

6 MR. HEUBERGER: Anything that reduces the viability of
7 farming in the Imperial Valley will go against that goal.

8 MR. RODEGERDTS: Under regional vision on Page 5, the
9 general plan evidently states under goal three that the goal
10 is to achieve balanced economic and residential growth while
11 preserving the unique natural scene and agricultural
12 resources of Imperial County.

13 I would imagine that you would agree that in order to
14 do that water would be a vital component of that; is that
15 correct?

16 MR. HEUBERGER: Absolutely.

17 MR. RODEGERDTS: Therefore, if some of that water that
18 is being utilized now to achieve goal three is no longer
19 available, it would be more difficult to achieve goal three,
20 correct?

21 MR. HEUBERGER: Probably, yes.

22 MR. RODEGERDTS: You indicate at the bottom of Page 5,
23 and as you had earlier testified, that there is a optional
24 element that Imperial County has elected to include in its
25 general plan and that is a water element. And there it is

1 stated that a goal is to protect the adequacy of the future
2 water supplies of Imperial County.

3 Once again, if water begins to be directed out of the
4 County, which is currently utilized in the County, it will
5 make achieving that goal more difficult; is that correct?

6 MR. HEUBERGER: Correct.

7 MR. RODEGERDTS: You testified earlier regarding the
8 gross value, farm value I assume, of the agricultural
9 products produced in Imperial County is about \$1,000,000 and
10 have been in recent years; is that correct?

11 MR. HEUBERGER: That's correct.

12 MR. RODEGERDTS: Do you know where Imperial County's
13 gross agricultural production fits in the hierarchy of the
14 58 counties in California?

15 MR. HEUBERGER: A number sticks in my mind, but I'm not
16 positive.

17 MR. RODEGERDTS: Would you accept that it is usually
18 nine, ten or 11, in that range?

19 MR. HEUBERGER: I was going to say it was in the top
20 15. I would agree with that.

21 MR. RODEGERDTS: Do you have any idea where that
22 production fits in the hierarchy of the more than 3,000
23 counties in the United States?

24 MR. HEUBERGER: Not offhand.

25 MR. RODEGERDTS: Would you be surprised to know that in

1 the first 15 or so, I think 12 or 13 of the top producing
2 agricultural counties in the U.S. there is only one that
3 isn't in California? Would that surprise you?

4 MR. HEUBERGER: No, it would not.

5 MR. RODEGERDTS: Isn't it also true that one of the
6 things that makes -- would you agree that not only is
7 Imperial County agricultural production a national resource,
8 that it may be and international resource as well?

9 MR. HEUBERGER: Yes.

10 MR. RODEGERDTS: And is it not true that one of the
11 things that makes Imperial County agricultural production so
12 unique, particularly for domestic food production, is that
13 some months of the year some of the crops that are grown in
14 Imperial County can be grown nowhere else in the United
15 States during those months?

16 MR. HEUBERGER: Yes.

17 MR. RODEGERDTS: You indicate that one of the problems
18 with this water transfer is Imperial County's recognition
19 recently, I guess, of the importance of the Williamson Act
20 Program and that something like a quarter of the 500,000
21 acres in agricultural production in the county are now in
22 the Williamson Act Program?

23 MR. HEUBERGER: Yes.

24 MR. RODEGERDTS: How does going forward with this water
25 transfer impact that program? You state on Page 8, Line 3:

1 To protect this industry the County has entered into the
2 Williamson Act provisions and in less than two years has
3 placed about one-fourth of its agricultural land into
4 preserves authorized by the act.

5 And maybe I am reading more into that sentence than I
6 should. I gain the impression from that that some way you
7 felt that that program would be impacted by this water
8 transfer; is that correct? Or am I misinterpreting that?

9 MR. HEUBERGER: No. When we entered into the program a
10 few years ago, one of the more frequent questions from the
11 farm community was how the County would treat the Williamson
12 Act land should the water conservation or water transfer
13 program result in fallowing. For example, how would we
14 treat Williamson Act, et cetera. It is of concern.

15 MR. RODEGERDTS: I have two questions. Do you have an
16 opinion, first, as to how that fallowed land might be
17 treated under the Williamson Act program? And let me ask
18 you the second question so you know where I'm going. How do
19 you think that the County is going to treat land that is
20 permanently fallowed, however that is defined, under the
21 Williamson Act Program?

22 Answer the first, what is -- do you have an opinion as
23 to how fallowed land would be treated under the Williamson
24 Act Program, looking at the statewide statutory
25 enactment? I know some might say this is a legal question,

1 but you are the administrator of the act and the program,
2 and I am just asking if you have an opinion as to how that
3 might be treated.

4 MR. HEUBERGER: I am not entirely sure how it would be
5 treated. I think the answer to your second question was, I
6 don't know what the Board's position would be on how to
7 treat because, again, we posed that question several times
8 to them. By definition fallowed land might be considered
9 open space and still falls under the Williamson Act, so we'd
10 still be within the act.

11 MR. RODEGERDTS: Under your discussion of concerns with
12 the proposed transfer beginning on Page 9, at the bottom of
13 that page, you talk about, well, in return willing seller
14 often used to support this water transfer experiences of
15 Owens Valley 1920's and the Lahontan Valley in 1990 out of a
16 risk of concern and even fear in the hearts of the county
17 residents.

18 What do you mean by the experiences in those two areas
19 in this context of the willing sellers and so forth?

20 MR. HEUBERGER: I'm not sure I understand your
21 question.

22 MR. RODEGERDTS: In the sentence you talk about the
23 experiences that the county residents perceive occurred in
24 the Owens Valley in 1920 and in the Lahontan Valley in the
25 1990s resulted in concern about this program going forward.

1 I am just asking you what your understanding is or why is
2 this concern being generated as a result of these two
3 earlier experiences elsewhere in the state or, I guess,
4 Lahontan is now here.

5 MR. HEUBERGER: I think the concern that we have had
6 on this transfer in general has been that, as I mentioned
7 earlier, primarily are almost sole source of water, with the
8 exception of a few groundwater basins, is the Colorado
9 River. We have no alternative sources of water. There's
10 already been a perception of at least two large government
11 projects, and that we won't have an adequate and reliable
12 source of water. So any indication that we are losing water
13 or have less water makes it that much more difficult to
14 attract economic development projects.

15 MR. RODEGERDTS: Thank you very much, Mr. Heuberger.

16 Dr. Libicki, I think I only have maybe one, two
17 questions for you.

18 Specifically on Page 5 of your testimony, Paragraph
19 12. You discuss what might be done to get land back in
20 production after it had been through an extended fallowing
21 program. And I was wondering whether you had any opinion as
22 to how much water would have to be applied in order to get
23 these fallow lands leached out so you can return to a level
24 of agricultural production that it had prior to the extended
25 fallowing period?

1 DR. LIBICKI: No, I don't.

2 MR. RODEGERDTS: That was simple.

3 Thank you.

4 Thank you very much, folks.

5 CHAIRMAN BAGGETT: Thank you.

6 Defenders, Mr. Fletcher.

7 ---oOo---

8 CROSS-EXAMINATION OF COUNTY OF IMPERIAL

9 BY DEFENDERS OF WILDLIFE

10 BY MR. FLETCHER

11 MR. FLETCHER: Good afternoon.

12 I think all of my questions or at least nearly all of
13 the questions are for Dr. Libicki.

14 I wanted to start out with an issue that I didn't fully
15 understand from your written and also you mentioned briefly
16 in your oral testimony.

17 You stated that United States EPA recently determined
18 that Imperial County would be attainment for PM-10 but for
19 emissions from Mexico. First of all, can you describe how
20 that works physically in terms of is it just they make a
21 determination of that when the PM-10 emissions from Mexico
22 are drifting into Imperial County, take that out of the
23 total load? I don't understand quite the calculation.

24 DR. LIBICKI: That's more or less what they do.

25 MR. FLETCHER: Now, when they made that determination,

1 what are the practical consequences for Imperial County?

2 DR. LIBICKI: If Imperial County were not attainment,
3 it would be bumped up, is the jargon. That is to say it
4 would go into serious for moderate nonattainment to serious
5 nonattainment.

6 What that means is additional measures are imposed on
7 local sources to attempt to reduce further emissions.

8 The reason --

9 MR. FLETCHER: From that practical standpoint, does
10 EPA's determination mean, then, that Imperial is treated as
11 a moderate nonattainment?

12 DR. LIBICKI: It's actually in attainment, but it has
13 certain aspects of moderate nonattainment about its
14 regulatory status, if you will, but it is considered to be
15 in attainment but still has to impose reasonably achievable
16 control measures, or RACM as it is known.

17 MR. FLETCHER: Is that also true of California air
18 quality, California state air quality?

19 DR. LIBICKI: California state air quality standards
20 right now aren't an enforcing function, if you will. It is
21 more of a categorization, has certain aspects about the
22 control program that has to be in the rules and regulations.
23 But California air quality standards are not treated the
24 same way as EPA standards under the regulations.

25 MR. FLETCHER: From a practical point of view, maybe

1 with some exceptions, is Imperial nonattainment? Maybe I'm
2 asking for too much detail. I just want the general
3 picture.

4 DR. LIBICKI: There are some air quality monitors in
5 the County that measure concentrations in excess of the
6 federal ambient air quality standards.

7 MR. FLETCHER: You also mentioned in your testimony
8 that California Air Resources Board has developed some
9 methods to estimate emissions from farm practices, including
10 fallowing. I was just curious if you could elaborate on
11 that and describe some of them for us.

12 DR. LIBICKI: Agricultural emissions are a source of
13 emissions in California. So when districts and agencies
14 prepare their emissions budget or emissions inventory, they
15 have to count agricultural emissions in it. So those
16 methods have been developed by California Resources Board
17 and are used throughout the state.

18 MR. FLETCHER: You have some material in your written
19 testimony about temperature. I am not sure you did discuss
20 it in your oral testimony.

21 On Page 7, you don't need to turn there necessarily,
22 you state that air temperatures at the south end of Salton
23 Sea are below 60 percent about 25 percent of the time. Is
24 that correct?

25 DR. LIBICKI: Sixty degrees Fahrenheit.

1 MR. FLETCHER: I'm sorry, did I say 60 percent? What I
2 actually meant was 60 degrees 25 percent of the time.

3 DR. LIBICKI: That is correct. That is the information
4 that we have received.

5 MR. FLETCHER: Is that true or at least about the same
6 at the north end too?

7 DR. LIBICKI: In general the temperatures get cooler as
8 you go further north. I would expect it would be the same
9 or increase slightly.

10 MR. FLETCHER: You also stated that when the
11 temperature is below 60 degrees conditions are conducive to
12 forming unstable salts?

13 DR. LIBICKI: That is correct. Surface temperatures
14 below 60.

15 MR. FLETCHER: Temperatures around the Salton Sea are
16 generally low enough to produce conditions forming unstable
17 salts?

18 DR. LIBICKI: I want to point out that I measure air
19 temperatures which don't correlate perfectly with surface
20 temperatures. But you would expect, yes, the surface
21 temperatures would also be low enough some of the time.

22 MR. FLETCHER: Just a final set of questions.

23 You stated that if the exposed seabed at the Salton Sea
24 causes dust storms that are only a fraction as powerful as
25 Owens Lake, there will be public health impacts in the

1 Imperial County, correct?

2 DR. LIBICKI: That's correct.

3 MR. FLETCHER: And you also stated that there are
4 several populated areas less than five miles from the Salton
5 Sea shores?

6 DR. LIBICKI: That's correct.

7 MR. FLETCHER: Can you tell me what those areas are.
8 And if one or the other of you can better answer that
9 question, please feel free to jump in.

10 MR. HEUBERGER: Question was populated areas around the
11 Salton Sea?

12 MR. FLETCHER: Less than five miles from the Salton Sea
13 shorelines?

14 MR. HEUBERGER: Communities within and adjacent to the
15 Salton Sea. Salton City is an unincorporated city and
16 Desert Shores, Bombay Beach, Salton Sea Beach.

17 MR. FLETCHER: About how many people live in those
18 towns or area?

19 MR. HEUBERGER: Each one varies. Desert Shores is
20 probably the most concentrated population. I am not sure
21 exactly what it is. It's probably somewhere in the vicinity
22 of a thousand people.

23 Bombay Beach probably has, given the time of the year
24 also, probably 3- to 500.

25 MR. FLETCHER: Is there a particular reason why you

1 stated that -- made that statement the way you did, you
2 chose five miles from the Salton Sea?

3 DR. LIBICKI: I think Westmoreland is just inside there
4 as well.

5 Isn't that?

6 MR. HEUBERGER: Westmoreland.

7 DR. LIBICKI: I think it had to do with the location of
8 Westmoreland which is the largest city in that area. I
9 thought it was just inside, but I would have to check.

10 MR. FLETCHER: Based on the information that you have
11 about wind speeds around the Salton Sea would areas within
12 five miles of the Salton Sea potentially be impacted by dust
13 storms?

14 DR. LIBICKI: Yes.

15 MR. FLETCHER: Are there people who work within five
16 miles of the Salton Sea as well?

17 DR. LIBICKI: Yes.

18 MR. FLETCHER: People who work in agricultural fields,
19 do they do that work within five miles of the Salton Sea?

20 DR. LIBICKI: Yes, they do.

21 MR. FLETCHER: Is it possible to estimate about how
22 many people might be -- might actually work within five
23 miles of the Salton Sea?

24 DR. LIBICKI: I think an estimate is possible, but I
25 can't do it here.

1 MR. FLETCHER: Now you said that you were -- were you
2 here yesterday for Mr. Schade's testimony?

3 DR. LIBICKI: No, but I have read the written
4 testimony.

5 MR. FLETCHER: You're familiar with the calculation he
6 makes in that testimony, that an acre of sediment at the
7 Salton Sea is only 1 to 10 percent as emissive as an acre at
8 Owens Lake, that peak 24-hour concentrations of PM-10 in
9 the area of the Salton Sea could be between 300 and 4,000
10 micrograms per cubic meter.

11 Do you remember that percent?

12 DR. LIBICKI: Yes, I do.

13 MR. FLETCHER: That would be a range of about five to
14 25 times greater than the standard for PM-10 set by USEPA,
15 right?

16 DR. LIBICKI: Five times standard would be 600.

17 MR. FLETCHER: I'm sorry, two to five times?

18 DR. LIBICKI: Yes, that is correct.

19 MR. FLETCHER: Bad multiplication there.

20 Would concentrations of that -- I understand there is a
21 great deal of uncertainty surrounding the kinds of dust
22 storms that might be seen at Salton Sea. But would
23 concentrations of that nature affect the health of those who
24 are working within five miles or residents within five miles
25 of the Salton Sea?

1 DR. LIBICKI: Those concentrations are above the
2 federal 24-hour ambient air quality standard which is set at
3 the health protective level. So one would assume that,
4 yes.

5 MR. FLETCHER: You weren't here for Mr. Schade's
6 testimony, but he testified that the technicians who work
7 for Great Basin Air Pollution Control District have to leave
8 the area, they can no longer conduct their work when
9 concentrations reach, I believe it was, 600 micrograms per
10 cubic meter.

11 Does that sound right to you?

12 DR. LIBICKI: That sounds about right.

13 MR. FLETCHER: Based on information we have is it
14 possible that people who work within five miles of the
15 Salton Sea might have to actually just quit work and leave
16 at some point if they're dust storms?

17 DR. LIBICKI: Certainly those concentrations are very
18 hard to deal with.

19 MR. FLETCHER: No more questions.

20 Thank you.

21 MR. ROSSMANN: I request for one of my witness we take
22 a break, contact lens apparently.

23 CHAIRMAN BAGGETT: Let's take ten minutes and come back
24 with Audubon and PCL.

25 (Break taken.)

1 CHAIRMAN BAGGETT: Back on the record.

2 Audubon.

3 PCL.

4 MS. DOUGLAS: Yes.

5 ---oOo---

6 CROSS-EXAMINATION OF COUNTY OF IMPERIAL

7 BY PLANNING AND CONSERVATION LEAGUE

8 BY MS. DOUGLAS

9 MS. DOUGLAS: Good afternoon. Karen Douglas
10 representing PCL, Planning and Conservation League. I would
11 like to start with a couple of questions for Dr. Libicki.

12 Now, I think you testified that PM-10 is already a
13 problem in Imperial County, right?

14 DR. LIBICKI: I testified that some monitors in
15 Imperial County regularly read above the federal ambient
16 quality standard.

17 MS. DOUGLAS: You testified that some proportions of
18 PM-10 actually come across the border from Mexico?

19 DR. LIBICKI: That's correct.

20 MS. DOUGLAS: The PM-10 standard is really a
21 health-based, right, the federal standard?

22 DR. LIBICKI: That is correct.

23 MS. DOUGLAS: From a health perspective we don't
24 necessarily care whether the PM-10 comes from Imperial
25 County or Mexico from a health perspective?

1 DR. LIBICKI: From a health perspective in terms of the
2 source of the PM-10 it really doesn't affect the outcome.

3 MS. DOUGLAS: This is maybe a more general question.
4 Are any of you aware of any potential new PM-10 sources that
5 may come on line in Mexico?

6 DR. LIBICKI: The city of Mexicali is growing, and the
7 PM-10 generally is a result of general population
8 activities.

9 MS. DOUGLAS: Any new plants or anything that anyone
10 has heard of?

11 MR. HEUBERGER: Yes.

12 MS. DOUGLAS: What would that be?

13 MR. HEUBERGER: Two power plants, both under
14 construction.

15 MS. DOUGLAS: Where?

16 MR. HEUBERGER: Just south of the border in Mexicali.

17 MS. DOUGLAS: Imperial is actually a border county?

18 MR. HEUBERGER: Yes.

19 MS. DOUGLAS: Just south of the border is Mexicali?

20 MR. HEUBERGER: Yes.

21 MS. DOUGLAS: Where is the electricity going from the
22 plants?

23 MR. HEUBERGER: Part of it is going to California and
24 part of it is going to Mexico.

25 MS. DOUGLAS: Do you know what part of California? Is

1 it going to Imperial County?

2 MR. HEUBERGER: Not to my knowledge.

3 MS. DOUGLAS: Are these proposed plants likely, to your
4 knowledge, to have any impact on air quality or PM-10 in
5 Imperial County?

6 DR. LIBICKI: The proposed plants put out roughly 7
7 percent of the entire basin nox budget, if you will?

8 MS. DOUGLAS: Can you explain nox?

9 DR. LIBICKI: Oxides of nitrogen that are precursor to
10 ozone. They also put out, and I don't remember the exact
11 number, but it is several hundred tons of PM-10 as well.

12 MS. DOUGLAS: Is this happening or is it going to
13 happen?

14 DR. LIBICKI: It was -- those plants are under
15 construction right now.

16 MS. DOUGLAS: And is this likely to cross the border
17 and affect Imperial County's air quality?

18 DR. LIBICKI: Under certain meteorologic conditions it
19 is likely to cross the border and affect air quality
20 conditions.

21 MS. DOUGLAS: You mean when the wind is going in
22 certain directions?

23 DR. LIBICKI: That's correct. Well, certain direction,
24 yes, and other things associated with it, but yes.

25 MS. DOUGLAS: That is my air quality questions.

1 I would like to move on, if I could, to some of Mr.
2 Spickard's testimony.

3 First of all, I'd just like to clarify one of the
4 points you made in your oral testimony. You said that you
5 were familiar with Dr. Rod Smith's testimony in this
6 proceeding?

7 MR. SPICKARD: Yes.

8 MS. DOUGLAS: You said it's generally, technically
9 correct or generally a reasonable economic analysis?

10 MR. SPICKARD: Yes. In most of what I read that I can
11 recall, yes.

12 MS. DOUGLAS: Now, if we could, I would like to ask you
13 to turn to Page 3 of your own testimony, Imperial County
14 Exhibit 3, and if you'd go down to Paragraph 8, the first
15 sentence says, and I guess I'll read it: In the case of
16 fallowing the analysis assumes crops will be fallowed in the
17 proportion to the historical pattern of crops grown in the
18 Valley.

19 By analysis you mean the EIR/EIS?

20 MR. SPICKARD: Yes.

21 MS. DOUGLAS: For clarification that is IID Exhibit 55.

22 MR. ROSSMANN: I will say yes to that since the witness
23 probably doesn't know that.

24 MS. DOUGLAS: Thank you, Mr. Rossmann.

25 Your next sentence where you say that the CIC review --

1 the CIC review is the analysis that you also looked at in
2 preparing your testimony?

3 MR. SPICKARD: Right. That was the initial draft of
4 the CIC report that was part of the CAC's charge.

5 MS. DOUGLAS: You say that this CIC review notes that
6 selectively fallowing fields by type of crop based on water
7 consumption and crop value could be used to mitigate some of
8 the socioeconomic impacts. In other words, instead of
9 historical ratios of crop types, value per acre or jobs per
10 acre could be used in fallowing decision.

11 So, could you maybe elaborate or explain how that might
12 work?

13 MR. SPICKARD: Well, I was picking up on one of the
14 same comments that CIC had made regarding the analysis in
15 EIR, and I guess at the time both of us were thinking, gee,
16 instead of using historical crop patterns and maintaining it
17 why not mitigate by cutting out those crops that either use
18 too much water or don't employ enough people. I think in
19 both of our cases it was before we were aware of Dr. Smith's
20 testimony which made it appear a little more problematic to
21 simply just change crop pattern.

22 My understanding of his testimony is that the rotation
23 of crops on any given parcel throughout the Valley is an
24 important part of the way agriculture works in Imperial
25 Valley, and it is mostly like that you will still get a crop

1 rotation.

2 MS. DOUGLAS: You said in your testimony today that you
3 didn't really have an independent assessment of having
4 alfalfa in rotation is necessary or not?

5 MR. SPICKARD: I really don't know enough about
6 agricultural economics to know about that.

7 MS. DOUGLAS: Now, in cross-examination Dr. Smith had
8 said that he didn't account in his economic analysis for
9 either the economic values, say, through recreation that
10 the Sea brings to the County or the cost of potential
11 environmental and economic impact, say, from devastation
12 or loss from some sense of the Sea.

13 Is that your understanding of the testimony?

14 MR. SPICKARD: Yes, if that is what he said.

15 MS. DOUGLAS: Did you see anything contrary to that
16 when you read his testimony?

17 MR. SPICKARD: No, I didn't see anything contrary to
18 that.

19 MS. DOUGLAS: When you did your analysis or when you
20 looked at this issue, were you specifically focused on job
21 losses from fallowing?

22 MR. SPICKARD: Again, I wasn't doing an independent
23 analysis. I was reviewing the analysis of others. But most
24 of my focus was on the agriculture and fallowing, and I
25 found very little literature to review on Salton Sea

1 effects.

2 MS. DOUGLAS: Now, in your opinion, is there any way to
3 actually quantify the economic impacts of fallowing?

4 MR. SPICKARD: There may be methodologies to estimate
5 what the economic impacts might be if you know what a
6 specific program is and exactly how many acres and which
7 acres might be fallowed. The problem to date has been there
8 is no -- there is no way to know is there fallowing in the
9 program or not.

10 MS. DOUGLAS: In addition to the question is there a
11 fallowing program or not, is there any way to know how
12 fallowing would take place?

13 MR. SPICKARD: I am not sure I understand what you mean.

14 MS. DOUGLAS: Let me completely rephrase.

15 Pretend you know that there will be fallowing. Do you
16 now have enough information to quantify socioeconomic
17 impacts from that fallowing?

18 MR. SPICKARD: And to some extent, and that is exactly
19 what the EIR was attempting to do. In this case of maximum
20 fallowing, in fact, they were able to model a situation that
21 has a job loss of, whatever it was, 1,400 and something jobs
22 even before you look at some of the other programs. And
23 that is a standard economic methodology that does allow you
24 to estimate the impact on employment.

25 But I think one of my points in the work we've been

1 doing here is to suggest that there are other impacts beyond
2 that, including these fiscal impacts on the local
3 jurisdictions that also go a long way on job loss.

4 MS. DOUGLAS: Do you think the fiscal impacts on the
5 jurisdiction are solely tied to job loss or are they any
6 more general than job loss?

7 MR. SPICKARD: It is certainly more general than job
8 loss. For example, in my supplemental testimony I talk
9 about the impact, the fiscal impact, on those local
10 jurisdictions of lost revenue from declining property
11 values. A decline in property values resulting from
12 falling is certainly related to the employment loss, but
13 it is not jobs, per se, causing the loss of property tax
14 revenue.

15 MS. DOUGLAS: Anything that potentially lowers property
16 values, including odors from the Sea or air quality from
17 either falling or exposure or anything can have an impact
18 on the County's economic health?

19 MR. SPICKARD: It certainly could.

20 MS. DOUGLAS: To do a real quantitative analysis of
21 what the socioeconomic impact would be, does it help to know
22 in for the falling program if there is rotating or if
23 there is permanent falling taking place?

24 MR. SPICKARD: Yeah. I think you would have to have as
25 much definition as possible about all the details of how it

1 would take place and rotating versus permanent fallowing of
2 the field would be important.

3 MS. DOUGLAS: The question of how much farmers were
4 paid to fallow would also be important?

5 MR. SPICKARD: In terms of economic impact I'm not sure
6 that the amount of the payment to the farmer is as
7 important.

8 MS. DOUGLAS: Although is it possible that if a farmer
9 got paid a surplus they might invest in farm equipment?

10 MR. SPICKARD: That is true. Or, in fact, there is
11 also just the spending, the consumer spending by the farmer
12 and his family within that community as well.

13 MS. DOUGLAS: Do you -- this is now a general question.
14 Do any of you have an opinion as to what this transfer
15 project is actually going to look like?

16 MR. ROSSMANN: Your Honor, that is a pretty broad
17 question, and may I request the counselor try to refine it
18 and direct it to one of our panel at a time.

19 CHAIRMAN BAGGETT: Sustained.

20 MS. DOUGLAS: I will be happy to do that.

21 Mr. Spickard, do you have any idea, any opinion, as to
22 how the transfer is going to proceed?

23 MR. SPICKARD: How it's going to proceed in terms of
24 whether or not it includes fallowing?

25 MS. DOUGLAS: What kind of fallowing if it does include

1 following?

2 MR. SPICKARD: One of my central complaints here has
3 been that I don't know whether the program would include
4 following or not or to what extent and that is why, in fact,
5 I've stated that it appears to be in -- forgetting the exact
6 words, but a not very well defined program.

7 MS. DOUGLAS: I will continue with this line before
8 asking the other witnesses.

9 Mr. Spickard, I'm going to read you a quote and in a
10 moment I will ask you a question as to its applicability to
11 the situation.

12 Quote from Winston Churchill in an October 1939 radio
13 address. He said, I cannot forecast to you the action of
14 Russia. It is a riddle wrapped up in a mystery inside an
15 enigma.

16 If we were to strike the action of Russia and replace
17 it with how this transfer will be done, if it is done at
18 all, is that at all an accurate statement?

19 MR. OSIAS: Objection. Argumentative.

20 MS. DOUGLAS: I'm not arguing. I just asked --

21 MS. OSIAS: That is not what that question means.

22 CHAIRMAN BAGGETT: For him to answer that is certainly
23 -- I would sustain the objection.

24 You can use that in your closing arguments. You can
25 insert the name in there.

1 MS. DOUGLAS: I think I will rephrase the question.

2 Mr. Spickard, do you think we know any more about how
3 the proposed transfer will go forward than Mr. Churchill
4 knew about Russia?

5 MR. OSIAS: Objection. Calls for speculation with
6 respect to Churchill.

7 MS. DOUGLAS: I'm just asking for his opinion.

8 CHAIRMAN BAGGETT: Sustained. Relevancy is probably
9 also --

10 MS. DOUGLAS: I will not attempt to rephrase the
11 question again.

12 Would either of the other witnesses like to interject
13 anything on this point?

14 MR. ROSSMANN: It is hard to object, your Honor. I
15 would ask the same question if I could get away with it.

16 CHAIRMAN BAGGETT: It will make a nice statement in
17 closing brief.

18 MR. ROSSMANN: I think counsel is wise not to try to
19 restate the elegant language of Winston Churchill and
20 perhaps we should start with a new question.

21 CHAIRMAN BAGGETT: Yes.

22 MS. DOUGLAS: I will not only start with a new
23 question, but I will start with a new witness.

24 CHAIRMAN BAGGETT: Thank you.

25 MS. DOUGLAS: Mr. Heuberger, I understand you are the

1 director of the land use planning department for Imperial
2 County?

3 MR. HEUBERGER: Yes.

4 MS. DOUGLAS: You say here in your testimony, which is
5 IID Exhibit 1 [verbatim] that you have been director for 17
6 years, right?

7 MR. HEUBERGER: Yes.

8 MS. DOUGLAS: During those years that you had the
9 primary responsibility to prepare or supervise the
10 preparation of numerous projects involving complex land use
11 and technically exhausted laws and environmental studies; is
12 that right?

13 MR. HEUBERGER: Yes, it is.

14 MS. DOUGLAS: Do you consider that your department
15 fulfills its function, you know, of -- let me back up.

16 Do you permit projects? Is that part of your
17 responsibility?

18 MR. HEUBERGER: Yes, it is.

19 MS. DOUGLAS: Do you consider your department fulfills
20 this function of analyzing proposed projects, permitting
21 projects in a responsibly, legally and socially fashioned?

22 MR. HEUBERGER: Certainly try.

23 MS. DOUGLAS: Now I am going to give you a brief
24 hypothetical. Imagine that somebody were to apply to your
25 department with a proposed project, and the proposed project

1 is going to last for 75 years. It has -- and you look at it
2 and you see that it has potentially enormous impacts on the
3 economy, on health, on jobs, on air quality, on resources
4 that are important to the County, and the project proponent
5 said, well, we haven't quite figured out how we are going to
6 do this. And furthermore, the environmental analysis is
7 very general and proposed mitigation is very general because
8 the proponent says we haven't quite figured out what to do.

9 Would your department have some hesitation about
10 giving a permit for this project?

11 MR. HEUBERGER: Two answers. Yes. And we had a
12 project with the same length of time or longer, equally
13 complex issues.

14 MS. DOUGLAS: And equally undefined proposals?

15 MR. HEUBERGER: No. Would not release EIR under these
16 conditions.

17 MS. DOUGLAS: You would not?

18 MR. HEUBERGER: Would not have released.

19 MS. DOUGLAS: Thank you.

20 I have no further questions.

21 CHAIRMAN BAGGETT: Salton Sea.

22 ----oOo----

23 //

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION OF COUNTY OF IMPERIAL

BY SALTON SEA AUTHORITY

BY MR. HARGREAVES

MR. HARGREAVES: Good afternoon. Once again, I am Bob Hargreaves. I am the general counsel for Salton Sea Authority.

As you know Imperial County is one of the members of the Salton Sea Authority. In fact, we share to some extent common bosses. Some of your supervisors sit on my board. So if you have a chance to discuss this hearing, speak kindly of me if you would.

MR. HEUBERGER: Goes both ways.

MR. HARGREAVES: It goes both ways, agreed. I just have a few questions of Mr. Heuberger.

You just commented on your permitting authority. Do you anticipate, given your understanding of the project at this point, that Imperial County is going to be asked to permit any aspects of this transfer project?

MR. HEUBERGER: At this point in time my understanding is that we would not be permitting any part of this.

MR. HARGREAVES: So you're not anticipating your planning department having any particular role in the process?

MR. HEUBERGER: I don't think we have any jurisdiction at this point in time, at least to my knowledge.

1 MR. HARGREAVES: So IID is basically exempt from your
2 permitting process with respect to projects that it
3 undertakes in your jurisdiction?

4 MR. HEUBERGER: I didn't say that. I didn't say IID is
5 exempt. In fact, I argue against a lot of the things they
6 do.

7 MR. HARGREAVES: Let's be a little more specific. If
8 the project entailed under the HCP1 5,000 acres of fish
9 ponds, would that come to your department for review?

10 MR. HEUBERGER: It would require a grading permit, yes,
11 for creation of the fish ponds.

12 MR. HARGREAVES: To the extent that you're aware of the
13 plans for various on-farm conservation measures, do any of
14 those require county approval in any aspect that you are
15 aware of at this point?

16 MR. HEUBERGER: Typically the on-farm conservation
17 measures that have been done at least to date have been done
18 by the farmers. The farmer is required to get certain
19 permits, not the IID.

20 MR. HARGREAVES: If IID or the farmers come forward for
21 permitting authority with respect to different aspects of
22 the project, aren't you required to rely on the
23 environmental documentation put together by IID for the
24 project? IID would be lead agency, would it not?

25 MR. HEUBERGER: Can I ask you to clarify your

1 question?

2 MR. HARGREAVES: I guess the -- you're familiar with
3 the term "lead agency" and "responsible agency"?

4 MR. PELTIER: Yes.

5 MR. HARGREAVES: In this case would Imperial County be
6 a responsible agency with respect to the implementation of
7 the transfer project?

8 MR. HEUBERGER: I would say yes.

9 MR. HARGREAVES: As a responsible agency, you are
10 required to rely upon the environmental documentation that
11 has been produced by the lead agency, are you not?

12 MR. HEUBERGER: Generally, yes.

13 MR. HARGREAVES: Based on your review of the EIR at
14 this point, are you going to feel comfortable -- there again
15 it is only the draft form. Assuming that the EIR gets
16 certified -- let's back up.

17 IID would be the agency, then, to certify the EIR; is
18 that correct?

19 MR. HEUBERGER: It would be one of several I
20 understand, yes.

21 MR. HARGREAVES: And Imperial County would not be
22 called upon to certify the EIR/EIS?

23 MR. HEUBERGER: That is correct.

24 MR. HARGREAVES: Based on your review, and assuming
25 that the final EIR is certified in the form that is

1 substantially similar to the draft, are you going to feel
2 comfortable relying on that environmental document for your
3 environmental compliance with respect to implementation
4 programs?

5 MR. HEUBERGER: I would probably have to answer that by
6 saying it would depend on the project that we were
7 considering for permitting.

8 MR. HARGREAVES: That is fair.

9 With respect to the fishing pond, would you expect
10 there to be considerably more elaboration before you go
11 ahead and permit a project like that?

12 MR. HEUBERGER: Not with respect to creating fish
13 ponds, no.

14 MR. HARGREAVES: With respect to the fish pond you
15 believe the environmental documentation is sufficient at
16 this point for your permitting processes?

17 MR. HEUBERGER: At this stage I am not sure I can
18 answer that without having the project in front of us to
19 analyze what the exact project is and what the scope of the
20 EIR covers because the EIR is not finished either.

21 MR. HARGREAVES: Then, based on your reading the EIR,
22 the EIR at this point doesn't describe the fish ponds in
23 sufficient detail so that you can rely on it for an
24 environmental impact report?

25 MR. HEUBERGER: Probably true.

1 MR. HARGREAVES: Just a few more questions.

2 I am going to refer now to your Exhibit 1A. Is the
3 Salton Sea an important resource for Imperial County?

4 MR. HEUBERGER: We certainly think so.

5 MR. HARGREAVES: As part of your general plan and the
6 conservation and open space element, does it state that the
7 Salton Sea is a vital recreational open space component for
8 Imperial Valley?

9 MR. HEUBERGER: Yes.

10 MR. HARGREAVES: Is it also an important aspect of the
11 water element of your general plan?

12 MR. HEUBERGER: Yes.

13 MR. HARGREAVES: And the preservation of the quality of
14 the water in the Sea is an important goal for Imperial
15 County?

16 MR. HEUBERGER: Yes.

17 MR. HARGREAVES: And maintaining the long-term
18 viability of the Salton Sea and protecting the sustaining
19 wildlife and the broad range of ecological communities is
20 also an important goal for the County?

21 MR. HEUBERGER: Yes.

22 MR. HARGREAVES: Would you say that the Salton Sea is
23 also an important economic resource for the County?

24 MR. HEUBERGER: Yes.

25 MR. HARGREAVES: Thank you.

1 I have no further questions.

2 CHAIRMAN BAGGETT: Up to Tribes.

3 San Diego.

4 ---oOo---

5 CROSS-EXAMINATION OF COUNTY OF IMPERIAL

6 BY SAN DIEGO COUNTY WATER AUTHORITY

7 BY MR. SLATER

8 MR. SLATER: Good afternoon. Scott Slater on behalf
9 of San Diego County Water Authority.

10 I would like to start, if I can, with Mr. Heuberger.
11 Practical guy and looking for some practical solutions, I
12 read your testimony and I was interested by one of your
13 comments that you had about the lack of definition over what
14 was fallowing, permanent fallowing, temporary fallowing; is
15 that correct?

16 MR. HEUBERGER: Yes.

17 MR. SLATER: In your opinion -- could you describe that
18 concern?

19 MR. HEUBERGER: Well, it hasn't been well defined, and
20 there is a lot of opinion as to what it really could or
21 should or will mean.

22 MR. SLATER: That specifically relates to whether
23 temporary fallowing or what constitutes temporary fallowing
24 within the meaning of the Water Code?

25 MR. HEUBERGER: I am not sure it is within the meaning

1 of the Water Code. Our question is more what would
2 fallowing include, whether it is temporary or long term, how
3 would you do the fallowing? What is the program that
4 describes how fallowing would be accomplished?

5 MR. SLATER: That was my second question. Let me go
6 there first and then we'll come back. In your opinion,
7 then, there is a lack of definiteness with regard to the
8 method of conservation, whether fallowing will be permitted
9 or not, correct?

10 MR. HEUBERGER: Yes.

11 MR. SLATER: In your view, would the public at large,
12 people within Imperial County, be benefited if this Board in
13 issuing an approval, assuming for a second that it did so,
14 provided a requirement that IID come forward and file a
15 report with the Board outlining the elements of its
16 conservation plan? Would that be a beneficial thing?

17 MR. HEUBERGER: Let me answer this way. I am not sure
18 that I would consider the fact that this Board, with due
19 respect to the Board, whether that would constitute a
20 benefit. I think our Board, our Board of Supervisors, has
21 asked that a plan, a conservation plan, if it included
22 fallowing, a very detailed plan of fallowing be prepared and
23 that the Board of Supervisors have the authority to approve
24 it.

25 MR. SLATER: I understand your wish and desire, but

1 that wasn't my question. My question was: Assume for a
2 second that this Board issues an approval, assume that they
3 do. Would it be beneficial for the public generally, the
4 people doing business within Imperial, for this Board to
5 include a requirement that the Imperial Irrigation District
6 describe in detail its conservation program and to what
7 extent following would be permitted?

8 MR. OSIAS: Objection. It is an incomplete
9 hypothetical. I think the witness ought to know whether it
10 is before or after they certify the EIR, otherwise it
11 presumes a --

12 CHAIRMAN BAGGETT: Sustained.

13 MR. SLATER: I wasn't aware this Board could issue a
14 decision before a final, certified EIR, so I'll add that as
15 a fact.

16 A final certified EIR is in existence for the project.
17 The question then would it be beneficial, would it be
18 beneficial for IID to be required to file a report with this
19 Board outlining its conservation program? Let's start with
20 that and then we'll add. Would it be beneficial?

21 MR. HEUBERGER: Still trying to digest your question.
22 And if I understand it correctly, you're asking me would it
23 be beneficial for this Board to order the IID to do a
24 comprehensive plan for --

25 MR. SLATER: Actually, no, that wasn't the question.

1 It was from a public notice standpoint, the question is:
2 Would it be beneficial for the State Board to include in an
3 order a description of the conservation program it was going
4 to employ?

5 MR. HEUBERGER: Well, I misunderstood your question the
6 first time and I'm still not clear on it.

7 MR. SLATER: Is it your opinion that the public
8 generally wouldn't benefit from knowing what the
9 conservation program is that Imperial is going to implement?

10 MR. HEUBERGER: No, it is not.

11 MR. SLATER: So, it is your testimony, then, the people
12 should know about the program that Imperial is going to
13 implement, correct?

14 MR. HEUBERGER: I think I said that is yes.

15 MR. SLATER: And a requirement that IID file a report
16 which describes what the program is would assist in public
17 dissemination of what the program is, correct?

18 MR. OSIAS: The question is whether the requirement
19 would assist? Objection.

20 CHAIRMAN BAGGETT: Could you clarify?

21 MR. SLATER: A requirement that -- a requirement that a
22 plan be published and presented to this Board. I haven't
23 said anything about approving; I just said a report.

24 MR. HEUBERGER: My answer would be that that report and
25 that thing should be published before this Board makes its

1 decision as well as before the IID makes its decision.

2 CHAIRMAN BAGGETT: That wasn't his question.

3 MR. HEUBERGER: Not everything could be answered yes
4 or no. I just answered your question the best I can.

5 MR. SLATER: I am entitled to a yes or no answer.

6 CHAIRMAN BAGGETT: Can you answer?

7 MR. SLATER: If you can't answer it, you can say no,
8 you don't know.

9 MR. HEUBERGER: I don't know.

10 MR. SLATER: Okay, you don't know.

11 CHAIRMAN BAGGETT: Thank you.

12 MR. SLATER: Let me call your attention to Page 9 of
13 your testimony, Lines 15 through 19. Can you review the
14 sentence between Line 15 and Line 17?

15 MR. HEUBERGER: Yes.

16 MR. SLATER: What did you mean by that sentence?

17 MR. HEUBERGER: Page 9?

18 MR. SLATER: Line 15 through 17. The sentence
19 beginning with "Moreover, the proposed transfer fails to
20 address California Water Code provisions."

21 MR. HEUBERGER: We must have different page numbers.

22 MR. SLATER: The section of your testimony that begins
23 with Imperial County's concern.

24 MR. HEUBERGER: I have it.

25 MR. SLATER: Do you see the sentence that begins with

1 "moreover"?

2 MR. HEUBERGER: Yes.

3 MR. SLATER: Can you read that for me?

4 MR. HEUBERGER: Moreover, the proposed transfer fails
5 to address California Water Code provisions that only
6 recognize temporary fallowing as a source of "conserved
7 water."

8 MR. SLATER: What did you mean by that?

9 MR. HEUBERGER: Basically what it says, we don't think
10 the EIR adequately addresses the fallowing issue.

11 MR. SLATER: What about the California Water Code,
12 could it have been the fact that the California Water Code
13 indicates that conservation for temporary fallowing may be
14 permissible? Could that be it?

15 MR. HEUBERGER: Yes.

16 MR. SLATER: Would it be beneficial, in your mind, if
17 this Board were to include in an order approving this
18 transfer a construction of the statute which indicated what
19 temporary fallowing meant?

20 MR. HEUBERGER: I am sorry, I am not following your
21 question.

22 MR. SLATER: Would it be beneficial if this Board
23 included in an order a construction describing what
24 temporary fallowing meant?

25 MR. ROSSMANN: Your Honor, I haven't objected too much,

1 but I think I will object. That is calling for a legal
2 argument and conclusion.

3 MR. SLATER: Mr. Chair, it is not. I am asking whether
4 it would be beneficial to the County in understanding a
5 conservation program what temporary versus permanent
6 fallowing was.

7 CHAIRMAN BAGGETT: You are asking this of --

8 MR. ROSSMANN: He was asking the witness whether this
9 Board should do that.

10 CHAIRMAN BAGGETT: The question he -- I will sustain
11 that. But the way you just rephrased it, that wasn't the
12 question I heard either.

13 MR. SLATER: I'm sorry, I thought --

14 CHAIRMAN BAGGETT: You put it in the context of this
15 Board.

16 MR. SLATER: I will restructure.

17 Would this witness believe that it would be beneficial
18 if an order, if an order approving the transfer also
19 included a definition of what temporary fallowing meant?

20 MR. HEUBERGER: Probably.

21 MR. SLATER: Thanks.

22 Dr. Libicki, I was noticing, and again I do this with
23 some trepidation that the pagination and pages don't match.
24 I was looking at, I believe, Page 5, Paragraph 12 of your
25 testimony, certainly Paragraph 12.

1 And you reference a phenomena which you call souring,
2 correct?

3 DR. LIBICKI: That's correct.

4 MR. SLATER: Can you explain what that is?

5 DR. LIBICKI: It is hopefully explained in the
6 paragraph. It discusses the capillary action pulling salts
7 up toward the surface of the soil.

8 MR. SLATER: And I believe your testimony is that that
9 would occur in instances where fallowing was carried on more
10 than periods of five years?

11 DR. LIBICKI: It actually occurs continually as the
12 fallowing occurs. It's -- five years was thought to be a
13 cut point beyond which it was a very serious concern.

14 MR. SLATER: Up to five years -- your testimony is at
15 five years that is the critical period, correct?

16 DR. LIBICKI: No. It's that if one were to choose a
17 time period or one could say beyond this time period there
18 would be no going back, if you will, five years was a
19 reasonable time period to choose.

20 MR. SLATER: So five years is a reasonable time period
21 to choose, correct?

22 DR. LIBICKI: For that standard.

23 MR. SLATER: It could be more, could be less, correct?

24 DR. LIBICKI: That's correct.

25 MR. SLATER: Mr. Spickard, is it Spickard?

1 MR. SPICKARD: Either. Spickard, typically.

2 MR. SLATER: I like that.

3 I think your testimony indicates that the socioeconomic
4 analysis as it is used in the EIR assumed that all transfer
5 funds not required by IID to pay for environmental or its
6 conservation will be paid to the farmers. Is that roughly
7 accurate?

8 MR. SPICKARD: That was my understanding.

9 MR. SLATER: After tax there were certain assumptions
10 made about how that money was going to be distributed; is
11 that right?

12 MR. SPICKARD: If you are referring to the 50/50
13 percent thing in the EIR, right. It is not distributed in a
14 conscious way, it is that is the way the money would end up
15 flowing through the economy.

16 MR. SLATER: Then you indicated that you might get some
17 different results if you used different percentages, 10/90,
18 90/10, correct?

19 MR. SPICKARD: Correct.

20 MR. SLATER: In your analysis did you take into
21 account whether the payment was going to a landowner as
22 opposed to a farmer?

23 MR. SPICKARD: This really wasn't my analysis. In
24 fact, all I was doing was questioning the analysis that had
25 been done.

1 MR. SLATER: You didn't make an assumption that the
2 landowner was the farmer, correct?

3 MR. SPICKARD: No, I did not assume one way or the
4 other.

5 MR. SLATER: If the desire was to encourage a retention
6 of proceeds within Imperial County, would it be beneficial
7 for the Imperial Irrigation District to structure the
8 payments to encourage that result?

9 MR. SPICKARD: From an economic impact perspective,
10 yes, it would.

11 MR. SLATER: And would you agree that the Imperial
12 Irrigation District being the recipient of the money from
13 the transferee under San Diego/IID deal would be in the best
14 position to structure that program?

15 MR. SPICKARD: You're getting into an area that I have
16 been reading in Dr. Smith's testimony becomes a very
17 complicated series of decisions of how individual fields,
18 individual farmers, individual agricultural operations would
19 best be able to conserve water and which technologies that
20 they would choose to use. To try to answer your question,
21 it certainly seems to be -- it would be beneficial to have
22 some knowledge in advance of what the program would entail,
23 what techniques would be utilized, but I honestly couldn't
24 tell you or I would not have an opinion on whether the IID
25 Board or individual farmers would have the best knowledge of

1 how the agriculture works to structure that program.

2 MR. SLATER: Fact specific, is that your answer, you
3 need more information depending on the facts?

4 MR. SPICKARD: I guess so.

5 MR. SLATER: Let's go from the practical maybe to the
6 theoretical.

7 You're an economist, right?

8 MR. SPICKARD: Right.

9 MR. SLATER: By training.

10 In that capacity you're familiar with methods of
11 valuing assets, correct?

12 MR. SPICKARD: Yes.

13 MR. SLATER: Do that all the time?

14 MR. SPICKARD: (Witness nods head.)

15 MR. SLATER: When you're coming up with a value, you
16 would consider many things, but in assigning or assessing
17 what is fair market value for something. You've done that
18 before, haven't you?

19 MR. SPICKARD: Yes.

20 MR. SLATER: And comparable sales for a similar asset
21 are often used as a method for coming up with values; isn't
22 that right?

23 MR. SPICKARD: Yes. That is in a freely functioning
24 market.

25 MR. SLATER: In a freely functioning market there are a

1 laundry list of variables that I don't want to go into now.
2 But assuming everything else is constant, comparable sales
3 is material, correct?

4 MR. SPICKARD: Yes. Though, again, I guess I am trying
5 to draw a distinction between a freely functioning market
6 and a regulated system.

7 MR. SLATER: I follow.

8 Are you aware that the San Diego County Water Authority
9 is wholly within the Metropolitan Water District?

10 MR. SPICKARD: I think I am aware that that is the
11 source of their water. I didn't realize that they are
12 within the district.

13 MR. SLATER: Are you aware that the Metropolitan Water
14 District is generally within what we refer to as Southern
15 California?

16 MR. SPICKARD: Yes.

17 MR. SLATER: That San Diego is generally within
18 Southern California, correct?

19 MR. SPICKARD: Yes.

20 MR. SLATER: Haven't become part of Mexico yet?

21 MR. SPICKARD: Right.

22 MR. SLATER: Based upon testimony yesterday, I don't
23 know.

24 For the following questions I just want to set up a
25 boundary for purposes of my questions, and that is that we

1 are offering within a market which is Southern California.

2 Okay?

3 MR. SPICKARD: Okay.

4 MR. SLATER: I want you to assume that everything else
5 in these transactions is equal, but it is in Southern
6 California. Just asking you to make that assumption. That
7 all these transactions occurred in the last ten years, and
8 most of which in the last couple years and I'll even
9 identify whether they are within the last year or not.

10 I guess the first question I have is you made an
11 assumption in your supplemental testimony that San Diego was
12 going to pay IID roughly \$250 per acre-foot; is that right?

13 MR. SPICKARD: That was my assumption.

14 MR. SLATER: With that assumption you assumed again
15 that it is \$250 per acre-foot. Have you -- and then based
16 upon that, if you wanted to know whether that was a fair
17 market value or comparable value being paid, you want to
18 know something about other transactions, correct? That
19 would be material?

20 MR. SPICKARD: That is one of the different methods you
21 can use.

22 MR. SLATER: One of the different methods.

23 MR. SPICKARD: There is also replacement value, what
24 are their alternatives.

25 MR. SLATER: Alternative water would be another one?

1 MR. SPICKARD: Right.

2 MR. SLATER: If we were going to, we would say, gee,
3 what's the cost of Metropolitan water, right? Sorry, let me
4 lay the facts.

5 Assume for a second that San Diego buys water from
6 Metropolitan. It is buying it now. So that might be an
7 alternative source or cost of replacement. That would be
8 relevant, right?

9 MR. SPICKARD: That would be one. Desalinating water
10 might be another.

11 MR. SLATER: Recycled water and ag conversion and --

12 MR. SPICKARD: Yes.

13 MR. SLATER: So holding those aside, as I only have 41
14 minutes left, holding those aside, if we're going to look at
15 comparable sales, assume for a second that -- were you aware
16 that this transfer proceeding is an instance in which
17 200,000 acre-feet of water is going be to conserved and made
18 available to San Diego, but that another a hundred thousand
19 is being conserved and made available to Coachella and to
20 Metropolitan?

21 MR. SPICKARD: I understand that. At different
22 negotiated rates.

23 MR. SLATER: Which takes to my first question. Were
24 you aware that the price being paid by Coachella is roughly,
25 approximately between 50 and \$75 per acre-foot?

1 MR. OSIAS: Objection. Misstates the prices.

2 MR. SLATER: Assume --

3 CHAIRMAN BAGGETT: Sustained.

4 MR. SLATER: Assume that the price is roughly between

5 55 and \$75 per acre-foot.

6 MR. SPICKARD: Okay.

7 MR. SLATER: Would that be relevant to your

8 consideration of whether the 250 was a fair price under a

9 comparable sales analysis?

10 MR. SPICKARD: Well, I think we're outside of the

11 fundamental economic assumption of a freely functioning

12 market. I think what we are talking about is a negotiated

13 deal between Imperial and Coachella and Metropolitan for

14 some specific amount of water at a specific price.

15 MR. SLATER: It is a negotiated price. I will accept

16 that. But if all things being equal and assuming that it is

17 not a regulated market -- assuming that it is. Sorry,

18 strike that.

19 Assume that it is a --

20 MR. SPICKARD: Regulated?

21 MR. SLATER: Unregulated market.

22 MR. SPICKARD: Unregulated.

23 MR. SLATER: I am not asking you to decide whether

24 that's the price. All I want to know is if it's relevant?

25 MR. SPICKARD: So this is entirely a hypothetical?

1 MR. SLATER: Yes.

2 MR. SPICKARD: If in a world where water was freely
3 function -- there was a freely functioning market for water
4 and whoever had it and sold it to the highest bidder, if
5 somebody were paying \$50 an acre-foot for it, that would be
6 relevant. And if somebody were paying 250 a foot, that
7 would be relevant, too.

8 MR. SLATER: You are probably saying that a regulated
9 market, it depends on variety of factors, right?

10 MR. SPICKARD: Whatever the factors were in the
11 negotiations and whether you could get more at that rate or
12 -- yeah.

13 MR. SLATER: Same borders on the question as the last
14 one, and again assume that Metropolitan is paying 125.
15 Would that be relevant?

16 MR. SPICKARD: Well, all pricing is relevant in that
17 hypothetical competitive market.

18 MR. SLATER: Moving beyond the Colorado River and in
19 that hypothetical would it be relevant that San Diego was
20 able to buy water through the state water bank at
21 approximately \$175 per acre-foot?

22 MR. SPICKARD: We're still in Southern California or
23 are we now getting Northern California water?

24 MR. SLATER: San Diego is still in Southern California,
25 but the water comes from the Central Valley.

1 MR. SPICKARD: We're moving out of Southern California
2 as far as the source of the water, anyway?

3 MR. SLATER: That's correct.

4 MR. SPICKARD: What was the question?

5 MR. SLATER: Would it be relevant to pricing, to value?

6 MR. SPICKARD: Sure, yeah.

7 MR. SLATER: We'll return to Southern California.

8 Would it be relevant if on an annual basis groundwater was
9 freely traded throughout Southern California at a price of
10 roughly 200 to \$225 per acre-foot?

11 MR. SPICKARD: Yes. Again, in the hypothetical all of
12 these prices would be relevant.

13 MR. SLATER: In coming to your conclusion that there
14 might be some wiggle room in the price --

15 MR. SPICKARD: That's a technical economic term.

16 MR. SLATER: Right.

17 You indicated that you assumed that there was initial
18 start price of roughly \$250 per acre-foot?

19 MR. SPICKARD: Yes.

20 MR. SLATER: Were you aware that under the San
21 Diego/IID agreement that that is only the start price and
22 the price is escalated?

23 MR. SPICKARD: Yes. I understand that changes over
24 time.

25 MR. SLATER: And over the first 15 years it keeps

1 escalating until it reaches roughly \$373 per acre-foot?

2 MR. SPICKARD: I don't know the specifics, but I knew
3 there was an escalation clause in there somewhere.

4 MR. SLATER: Let's assume for a second, because I'm
5 just comparing an exhibit to the EIR, which is also
6 contained in your exhibit -- just for ease, it's Exhibit C
7 and it is the fold-out table that was added today.

8 That is an excerpt from the EIR?

9 MR. ROSSMANN: I'm sorry, your Honor, I didn't
10 understand. Perhaps Mr. Slater should make that
11 identification, something that was added today that is in --

12 MR. SLATER: Sorry. This is a table that was an
13 excerpt from EIR which is referenced in the comments. I was
14 just --

15 CHAIRMAN BAGGETT: EIR?

16 MR. SLATER: I will make an offer of proof to cure
17 that, if you'd like?

18 CHAIRMAN BAGGETT: Is it IID Exhibit 55?

19 MR. SLATER: IID Exhibit 55.

20 MS. DIFFERDING: And this is in Imperial 1A, right?

21 MR. SLATER: And this is Imperial County 1A, correct.

22 MR. ROSSMANN: That was helpful, your Honor. I just
23 wanted to make sure that, if you'll pardon the phrase, we
24 were all on the same page here.

25 MR. SLATER: Thank you, counsel.

1 So to return, then, my point was is that the price was
2 escalating from roughly under this chart start price of 241
3 to approximately 373?

4 MR. ROSSMANN: Before you answer, I'm sorry, I want
5 the witness to make sure he has in front of you, him, the
6 table to which you're referring. And let me just make a
7 suggestion. If you have an EIR reference, that might be
8 more helpful since that is what the witness did actually
9 review. We've got the EIR here in front of us.

10 MR. SLATER: I don't have that handy, counselor.

11 MR. SPICKARD: I do remember seeing the chart in the
12 EIR as well.

13 MR. ROSSMANN: Then, your Honor, we have no further
14 questions, no objections.

15 CHAIRMAN BAGGETT: Proceed.

16 MR. SLATER: So I just want you to assume, then, that
17 the price is actually escalating. Did you take that into
18 account when you were estimating whether or not it was a
19 fair value for San Diego to pay?

20 MR. SPICKARD: I never really estimated a fair market
21 value for San Diego.

22 MR. SLATER: Thank you.

23 MR. SPICKARD: In the work done so far.

24 MR. SLATER: That is good to know.

25 Did you also -- were you aware that San Diego County

1 was also in addition to the price that it was paying to
2 Imperial it was also paying Metropolitan Water District to
3 exchange water? Did you know that?

4 MR. SPICKARD: Is this the wheeling rights and charges
5 for that?

6 MR. SLATER: No. It is actually an exchange agreement.

7 MR. SPICKARD: I don't think I am familiar with the
8 terms of that agreement.

9 MR. SLATER: You weren't taking into account, then, a
10 tried or exchange fee between Metropolitan and San Diego?

11 MR. SPICKARD: No.

12 MR. SLATER: I would like to go to your Attachment A.
13 Seems to me that -- well, let me ask you. Once San Diego
14 receives water, it tends to get a big bang for the buck,
15 wouldn't you say?

16 MR. SPICKARD: I am not sure what you mean by "big
17 bang."

18 MR. SLATER: Does San Diego tend to put its water
19 towards a higher economic value?

20 MR. SPICKARD: You seem to be implying that water makes
21 the economy or water makes it happen. I would say that San
22 Diego has a healthy economy and a fairly strong economy per
23 capita. Or in this case it looks like a valuable economy
24 per consumption of water.

25 Is that what you mean?

1 MR. SLATER: Fair enough.

2 Do you -- Strike that.

3 They also tend to use it rather efficiently, don't you
4 think, given -- let me illustrate -- given the fact that
5 they're able to support more people per acre-foot that they
6 use?

7 MR. ROSSMANN: Your Honor, I'd object unless the
8 witness feels that he is competent to comment on water
9 efficiency.

10 MR. SPICKARD: I actually have no real context to put
11 it in. I don't know if they are relatively more or less
12 efficient than any other county, for example.

13 MR. SLATER: So you don't know?

14 MR. SPICKARD: No.

15 MR. SLATER: Turn back to you, Mr. Heuberger.

16 Now you made a reference to the Owens-Mono Lake area;
17 isn't that right, with regard to taking water out of the
18 region?

19 MR. HEUBERGER: I believe, yes, there is reference.

20 MR. SLATER: The condition that gave rise to Owens
21 Valley and the Mono Lake situation, are that Los Angeles
22 began diverting water in the early 1900s; is that correct?

23 MR. HEUBERGER: That is my understanding.

24 MR. SLATER: Do you know whether they ever received a
25 permit from the State Water Resources Control Board before

1 they started taking water from Owens Valley?

2 MR. HEUBERGER: No, I don't know.

3 MR. SLATER: Do you know whether CEQA was around?

4 MR. HEUBERGER: I don't believe so.

5 MR. SLATER: Do you know whether there was a water
6 district or a county in place that was paid money in
7 exchange for making water available to go to Los Angeles?

8 MR. HEUBERGER: I don't know.

9 MR. SLATER: With regard to the county's interest in
10 trying to protect its ability to supply future urban use,
11 that is an important thing for the County of Imperial, isn't
12 it?

13 MR. HEUBERGER: Yes.

14 MR. SLATER: The present population is about 149,000
15 people, right?

16 MR. HEUBERGER: That's correct.

17 MR. SLATER: And you presently use about 62,000
18 acre-feet of water for that urban use; is that right?

19 MR. HEUBERGER: That is my understanding.

20 MR. SLATER: You're expecting that there is likely to
21 be a doubling over your 30-year plan?

22 MR. HEUBERGER: Twenty.

23 MR. SLATER: Is that right?

24 MR. HEUBERGER: Yes.

25 MR. SLATER: Do you expect that that growth will occur

1 as infill in urban area or will it occur as expansion into
2 agricultural lands?

3 MR. HEUBERGER: It is expected to occur within the
4 urban boundaries of our general plan.

5 MR. SLATER: And would you expect the future water
6 requirements on urban infill to be at the same level or as
7 your existing per capita use or would expect a reduction?

8 MR. HEUBERGER: Could you repeat it?

9 MR. SLATER: Would you expect that the future use of
10 the County, given it is going to occur within the urban
11 area, urban infill, would be on a per capita basis, would it
12 be roughly equal to how you're presently using water or
13 would you expect to use less for that purpose?

14 MR. HEUBERGER: I would expect roughly equal to what we
15 are currently using.

16 MR. SLATER: Do you know how your per capita urban use
17 compares to other urban communities?

18 MR. HEUBERGER: Not off the top of my head.

19 MR. SLATER: Do you know whether Imperial County has
20 signed an urban water purveyors best management MOU?

21 Sorry, do you know what the urban water purveyors best
22 management practices MOU is?

23 MR. HEUBERGER: Probably not.

24 MR. SLATER: So you wouldn't know, then, whether your
25 city does.

1 Do you know whether there is any water recycling
2 programs in Imperial County, urban water recycling?

3 MR. HEUBERGER: None to my knowledge right
4 now.

5 MR. SLATER: Any low flow toilet programs?

6 MR. HEUBERGER: Yeah, under new construction.

7 MR. SLATER: For new construction?

8 MR. HEUBERGER: For new construction.

9 MR. SLATER: And low flow showerheads?

10 MR. HEUBERGER: For new construction.

11 MR. SLATER: Any educational programs running about
12 conservation?

13 MR. HEUBERGER: There have been.

14 MR. SLATER: Almost done.

15 I read your general plan with great interest. And I
16 want to focus on a couple points. If I can get you to look
17 at, again, what I see as Page 6. And specifically call your
18 attention to goal three, which is adequate agricultural
19 irrigation water supply.

20 Am I correct that it is important to the County of
21 Imperial to preserve the availability of irrigation water
22 for the long term?

23 MR. HEUBERGER: I'm sorry, you're referring to goal
24 three, you said?

25 MR. SLATER: Goal three, under adequate agriculture

1 irrigation and water supply.

2 MR. HEUBERGER: Yes. Your question?

3 MR. SLATER: Is important to County of Imperial to
4 preserve its water supply for irrigation?

5 MR. HEUBERGER: Yes.

6 MR. SLATER: That is how I read it. So I was right in
7 terms of reading it?

8 MR. HEUBERGER: Yes.

9 MR. SLATER: Now, are you aware of any claims that have
10 been levied, I'm sorry, raised by the Coachella Valley Water
11 District that there was inefficient use occurring within
12 Imperial Irrigation District?

13 MR. HEUBERGER: Yes, I am.

14 MR. SLATER: Are you aware of any similar claims that
15 have been made by the Metropolitan Water District?

16 MR. HEUBERGER: Yes.

17 MR. SLATER: And were you aware of prior proceedings
18 before this State Water Resources Control Board involving
19 the question of reasonable and beneficial use?

20 MR. HEUBERGER: Yes.

21 MR. SLATER: And make that specific, regarding the
22 reasonable and beneficial use?

23 MR. HEUBERGER: Yes.

24 MR. SLATER: Also want you to take a look at
25 coordinated management, and that specifically is goal five.

1 Now my understanding -- can you read that?

2 MR. HEUBERGER: Goal number five?

3 MR. SLATER: Yes.

4 MR. HEUBERGER: Water resources shall be managed
5 effectively and efficiently through interagency --

6 THE COURT REPORTER: I'm sorry, I can't hear you.

7 MR. HEUBERGER: Water resources shall be managed
8 effectively and efficiently through interagency and
9 interjurisdictional coordination and cooperation.

10 MR. SLATER: Did you take that -- shall I read that to
11 apply only to intercounty relationships or is that also
12 applicable to getting along with your neighbors outside of
13 your county?

14 MR. HEUBERGER: Our general plan only governs our
15 county.

16 MR. SLATER: Would it be a good policy for the entities
17 doing business within your county to also try to coordinate
18 their efforts, say, for the State of California and
19 neighboring districts?

20 MR. HEUBERGER: Yes.

21 MR. SLATER: Are you familiar with the water transfer
22 agreement?

23 MR. HEUBERGER: Somewhat.

24 MR. SLATER: Are you aware that the transfer agreement
25 plus the related agreements, the QSA, the proposed scenario

1 under which IID will conserve up to 300,000 acre-feet of
2 water and make up to 200- available to San Diego, but also
3 make water available to Coachella and Met?

4 MR. HEUBERGER: Yes.

5 MR. SLATER: So you understand that San Diego is not
6 receiving the full 300-, right?

7 MR. HEUBERGER: Right.

8 MR. SLATER: Do you also -- are you aware there are
9 related agreements -- sorry, there is a related agreement
10 with the Secretary of Interior that has been proposed?

11 MR. HEUBERGER: Yes.

12 MR. SLATER: And do you recognize that if approved
13 after certification of the final EIR/EIS, if approved, that
14 these agreements collectively will bring peace to the --
15 Strike that.

16 Do you recognize that these collective agreements will
17 result in a coordinated water management program for the
18 Colorado River?

19 MR. HEUBERGER: I believe that is yes.

20 MR. SLATER: That would be a good thing, wouldn't it?

21 MR. HEUBERGER: Most likely.

22 MR. SLATER: Wouldn't it be a good thing to firm up and
23 guarantee the reliability of Imperial Irrigation District's
24 agricultural water for the benefit of its agricultural
25 users?

1 MR. HEUBERGER: I'm sorry, could you restate that?

2 MR. SLATER: Wouldn't it be a good thing for Imperial
3 County if the Imperial Irrigation District received a
4 firming up of its water supply?

5 MR. HEUBERGER: I didn't realize it wasn't already
6 firmed up.

7 MR. SLATER: Try it this way.

8 Do you think it would be a good thing -- wouldn't it be
9 a good thing if the program in place assured for the future
10 generations of Imperial County that the agricultural water
11 supplies that are there today is going to be there for
12 decades to come?

13 MR. HEUBERGER: If that is what it did, yes.

14 MR. SLATER: Well, if it did that, it would carry out,
15 certainly would carry out, the spirit of your general plan
16 goal number three, wouldn't it?

17 MR. HEUBERGER: Yes.

18 MR. SLATER: I only have one more question, maybe a
19 couple for Mr. Spickard.

20 Back to Table A. Have you gone through the process of
21 trying to calculate what the total payments San Diego is
22 going to make to Imperial Irrigation District over -- Strike
23 that.

24 Assuming for a second a price per acre-foot of water at
25 \$250 per acre-foot, have you done a calculation of how much

1 money San Diego would pay to IID under a 75-year agreement?

2 MR. SPICKARD: I have not made that calculation.

3 MR. SLATER: Assume for a second that it's in excess of
4 four and a half billion dollars.

5 MR. SPICKARD: Okay.

6 MR. SLATER: Are you aware that that would mean that
7 the people, the 2.8 million people, in San Diego County are
8 agreeing to pay on behalf of themselves and their future
9 generations about \$1,500 per person to support this transfer?

10 MR. SPICKARD: This is over 75 years?

11 CHAIRMAN BAGGETT: I think we have an objection.

12 MR. ROSSMANN: We do have an objection. I think some
13 facts not in evidence have been assumed about the number of
14 people in San Diego County, for starters.

15 MR. OSIAS: I was just going to object, I don't think
16 he's in a position to speculate about thinking of every one
17 of them.

18 CHAIRMAN BAGGETT: I think I have to sustain both of
19 those. More facts, make it a hypothetical.

20 MR. SLATER: Sure, sure, sure.

21 Assume for a second there is a payment price of \$250
22 per acre-foot, which is what you assumed in your testimony.
23 Assume there is a 75-year deal. Assume that under that
24 75-year deal that the payment of \$250 per acre-foot times
25 the amount of acre-feet being transferred will result in

1 \$4.5 billion being paid by San Diego to Imperial.

2 Okay?

3 MR. SPICKARD: Okay.

4 MR. SLATER: Now assume that they're roughly 2.9
5 million people living in San Diego County today.

6 MR. SPICKARD: Okay.

7 MR. SLATER: Assume further that those people live
8 within the boundaries of San Diego County Water Authority.

9 MR. SPICKARD: Okay.

10 MR. SLATER: And the San Diego County Water Authority
11 pledges to make that payment to its good partner in Imperial
12 County, Imperial Irrigation District, over the 75 years.

13 MR. SPICKARD: Okay.

14 MR. SLATER: Are you aware -- sorry.

15 Does that roughly comport or calculate to a payment by
16 the San Diego County Water Authority of \$1,500 per person
17 living there today?

18 MR. SPICKARD: I would have to get out my calculator to
19 do the math. But if you've done it, I am willing to believe
20 that.

21 MR. SLATER: Okay.

22 No further questions.

23 CHAIRMAN BAGGETT: Before we get to Mr. Osias, do we
24 have a lengthy cross coming up? If we do, I want to take a
25 break.

1 DR. LIBICKI: I am really not familiar with the
2 elevation changes over time.

3 MR. OSIAS: I take it in opining on the potential air
4 quality impact of this transfer you didn't take into account
5 how the elevation of the Sea has changed historically?

6 DR. LIBICKI: My opining the air quality impacts
7 strictly took in the historical changes that were described
8 in the EIR.

9 MR. OSIAS: Are there any exposed sediments that were
10 formerly under the Salton Sea in the County now?

11 DR. LIBICKI: I haven't done any analysis of that.

12 MR. OSIAS: So you don't know?

13 DR. LIBICKI: I don't know.

14 MR. OSIAS: If there were, would there, if I get the
15 word right, emissivity be relevant to the analysis of future
16 air impacts?

17 DR. LIBICKI: If there were exposed shoreline now, its
18 emissivity may or may not be relative to future air impacts,
19 because the air impacts would be a function of the shoreline
20 that is exposed, and the shoreline that is currently
21 exposed, if there is any, may be different than the
22 shoreline that will be exposed.

23 MR. OSIAS: Those are the kinds of questions people
24 should seek answer to, and depending on the answers, it may
25 be relevant or not?

1 DR. LIBICKI: That's correct.

2 MR. OSIAS: In evaluating the current status of the
3 PM-10 in the County, are you aware of any PM-10 emissions
4 from areas adjacent to the Salton Sea?

5 DR. LIBICKI: Emissions would generally occur from the
6 disturbed vacant land. And to the extent that area around
7 the Salton Sea qualifies as disturbed, vacant land, they
8 would be considered broadly in the State Implementation
9 Plan.

10 MR. OSIAS: That question was actually somewhat
11 specific rather than general or hypothetical. I mean in the
12 past, in your four years there have you observed any PM-10
13 coming from lands adjacent to the Salton Sea?

14 DR. LIBICKI: I apologize having to answer it once
15 again generally. We don't observe emissions anywhere in the
16 County when we do this kind of planning, rather the
17 emissions are cataloged in County.

18 MR. OSIAS: We had a witness yesterday -- I can't
19 remember whether you were here -- who told us how we could
20 see Owens Lake emissions, I think, from space even, but
21 certainly by driving by and seeing clouds. And one other
22 witness described it as the Twin Towers falling in that dust
23 cloud. So I thought you could see some of these.

24 I guess only at super concentrations. Is that the
25 difference?

1 DR. LIBICKI: Well, the emissions have to exist and the
2 person has to be there at the time to watch them. I don't
3 think that any of my testimony said the Salton Sea is
4 currently comparable to Owens Lake.

5 MR. OSIAS: I wasn't suggesting it is.

6 I want to go back to the question whether you've
7 observed them. And I think you said we don't observe them;
8 we measure them in some instrument.

9 At some levels people can observe them, if it is not in
10 person, right?

11 DR. LIBICKI: That's correct.

12 MR. OSIAS: Has anyone reported to you or made you
13 aware of visible PM-10 emission from areas adjacent to the
14 Salton Sea?

15 DR. LIBICKI: That is not the kind of report I would
16 get.

17 MR. OSIAS: So you wouldn't need to know whether that
18 was happening?

19 DR. LIBICKI: There is an air quality monitoring
20 fairly close to the Salton Sea at Niland, and that has
21 recorded a range of values, including some fairly high. It
22 is not clear where those emissions are coming from. And
23 that is part of the planning process, to help understand
24 that better.

25 MR. OSIAS: That is a planning process independent of

1 the transfer; is that right?

2 DR. LIBICKI: That's correct.

3 MR. OSIAS: So through that planning process we, the
4 County of Imperial, does not yet know the source of those PM
5 emissions measured at Niland?

6 DR. LIBICKI: Some of the sources are known, some are
7 unknown. I suppose you could say at this point.

8 MR. OSIAS: Are any of the sources adjacent to the
9 Salton Sea and the shoreline area?

10 DR. LIBICKI: I am not sure I understand your
11 question.

12 MR. OSIAS: Any of the known sources for PM-10 measured
13 at Niland coming from areas adjacent to the shoreline of the
14 Salton Sea?

15 DR. LIBICKI: We haven't targeted, if you will, a
16 source adjacent to the Salton Sea.

17 MR. OSIAS: Now I don't know what targeted -- I'm
18 actually trying to figure out if you've found a source that
19 you might want to do something about to try to reduce it.

20 DR. LIBICKI: I would say our state of knowledge isn't
21 as that precise at this point in time.

22 MR. OSIAS: At least to date don't know whether there
23 is land adjacent to the Sea that has a PM-10 emission
24 problem?

25 DR. LIBICKI: In the air quality planning context,

1 yeah.

2 MR. OSIAS: We heard testimony yesterday that it
3 doesn't take a whole lot of area to create a significant
4 PM-10 problem. I think the testimony was as little as four
5 square miles.

6 Do you agree with that?

7 DR. LIBICKI: I would have to look at the basis of the
8 testimony. I don't recall that from his written testimony.

9 MR. OSIAS: Set aside his testimony. Can four square
10 miles exposed lake bottom produce a PM-10 problem?

11 DR. LIBICKI: Close to the -- close to the lake bottom,
12 certainly.

13 MR. OSIAS: When you say "close to the lake bottom,"
14 you mean close to the center of the lake?

15 DR. LIBICKI: No. Close to the emission point. If you
16 ask me if a four square mile area could cause an impact a
17 hundred miles away, I might have a different answer.

18 MR. OSIAS: Where you detect it, if you are close to
19 where it is being emitted?

20 DR. LIBICKI: Correct.

21 MR. OSIAS: How long have you worked in the air quality
22 area?

23 DR. LIBICKI: About 12 years.

24 MR. OSIAS: Have you ever worked as a consultant on
25 soil issues?

1 DR. LIBICKI: Not other than to calculate emissions
2 from soils.

3 MR. OSIAS: You worked with Mr. Morris on this
4 testimony, you said, right?

5 DR. LIBICKI: That's correct.

6 MR. OSIAS: He is not a soil engineer?

7 DR. LIBICKI: He is not.

8 MR. OSIAS: Or a hydrologist?

9 DR. LIBICKI: He is not.

10 MR. OSIAS: So the source of information on the
11 capillary action comes from whom?

12 DR. LIBICKI: Actually, capillary action is a
13 legitimate engineering area, if you will.

14 MR. OSIAS: I know what it means, too. I'm just
15 wondering where you got the details on the capillary action
16 and souring of the soil in Imperial.

17 DR. LIBICKI: It was from a USDA presentation.

18 MR. OSIAS: It wasn't your own work?

19 DR. LIBICKI: That's correct.

20 MR. OSIAS: Is that source referenced anywhere in this?

21 DR. LIBICKI: It is unpublished research.

22 MR. OSIAS: You have a copy of it?

23 DR. LIBICKI: I wish I did. All I have was slides, and
24 I don't have a copy of those slides.

25 MR. OSIAS: Have you ever been involved in a water

1 conservation program from an engineering perspective?

2 DR. LIBICKI: No, I have not.

3 MR. OSIAS: You have never helped design a program to
4 capture evaporation?

5 DR. LIBICKI: Not in a water conservation process.

6 MR. OSIAS: Yet you opined that we could capture
7 evaporation in the Imperial Valley as a source of conserved
8 water, correct?

9 DR. LIBICKI: I believe what I said, perhaps we should
10 get the testimony, is that it was evaluated in the EIR.

11 MR. OSIAS: Have you evaluated it?

12 DR. LIBICKI: No, I haven't.

13 MR. OSIAS: Does everything in the world have to be
14 evaluated in an EIR? The answer should be no.

15 CHAIRMAN BAGGETT: Let's see. Argumentative, leading.
16 I might say the objections.

17 Rephrase.

18 MR. OSIAS: There is a standard for feasibility and
19 other sorts of criteria for what you evaluate in an EIR,
20 correct?

21 DR. LIBICKI: That is my understanding.

22 MR. OSIAS: So without any information on the
23 feasibility of capturing evaporation, you suggested it
24 should have been evaluated?

25 DR. LIBICKI: I wouldn't go so far as to say without

1 any information on the feasibility.

2 MR. OSIAS: Tell us what you did to develop information
3 on conserving evaporation.

4 DR. LIBICKI: What we did was a simple back of the
5 envelope calculation in terms of how much would be lost
6 simply by what is in the canals, which may or may not be
7 feasible to mitigate.

8 MR. OSIAS: Do you have the envelope?

9 DR. LIBICKI: I don't.

10 MR. OSIAS: How much was that?

11 DR. LIBICKI: It's roughly 10,000 acre-feet per year.

12 MR. OSIAS: You think that's a relevant volume for a
13 transfer of 230- to 300,000?

14 DR. LIBICKI: It may or may not be. It's an aspect --
15 it's a comment on the high rate of evaporation that exists
16 in Imperial County, and that rate of evaporation is
17 substantial. That was one, perhaps not simple or
18 cost-effective measure, but easy to envision measure that
19 resulted in a fair chunk of water.

20 MR. OSIAS: And in the context of your suggestion, it
21 may be that if someone could capture 10,000 acre-feet of
22 evaporation, it might alleviate some of the air quality
23 problems that you envision?

24 DR. LIBICKI: No. I would say there's too long of a
25 link there. The simple statement in the testimony was it

1 wasn't evaluated. It wasn't even mentioned. And because it
2 is important to the context of the testimony, it seems to be
3 a striking omission.

4 MR. OSIAS: You don't know of any southwestern desert
5 agricultural delivery system that is using open canals that
6 has managed to conserve water by capturing evaporation, do
7 you?

8 DR. LIBICKI: Again --

9 MR. OSIAS: That is a yes or no.

10 Do you know of them, first?

11 DR. LIBICKI: I am not familiar with them.

12 MR. OSIAS: I don't have anything else.

13 CHAIRMAN BAGGETT: Thank you.

14 Just mention that Mr. Heuberger and Spickard want to
15 walk around or something, they are free to.

16 I've got a couple questions.

17 That is all the questions for you?

18 MR. OSIAS: For this witness, yes.

19 CHAIRMAN BAGGETT: Tomorrow morning we'll come back.

20 So that we will just limit our questions also to Dr.

21 Libicki.

22 I have three or four, six actually.

23 ---oOo---

24 //

25 //

1 CROSS-EXAMINATION OF COUNTY OF IMPERIAL (LIBICKI)

2 BY THE BOARD

3 CHAIRMAN BAGGETT: You mentioned there is a monitor at
4 Niland Island. How significant do you consider the failure
5 -- as I recall, your testimony says they failed to use that
6 analysis. Is that a significant omission?

7 DR. LIBICKI: It is significant, yes, I do consider
8 significant for two reasons. One is that it is the monitor
9 that is closest to the bulk of the exposed shoreline. And
10 the second reason it is also the monitor that has the
11 highest recorded wind speeds.

12 CHAIRMAN BAGGETT: If you had to pick -- there is
13 potential emissions from a lake bed, the dried up lake bed
14 and from fallowing. Is one of those a higher priority or
15 tends to emit more PM-10 than the other per acre or more
16 significant?

17 DR. LIBICKI: I think it really depends on how the
18 mitigation is done. One could consider the agriculture, in
19 a sense, more significant because it is nearer the
20 population centers.

21 CHAIRMAN BAGGETT: Have you done any analysis -- you
22 talked about fallowing quite a bit. Does the seasonality of
23 that fallowing have an impact, whether you fallow in the
24 summer versus the winter versus the fall? Did you do any
25 comparisons?

1 DR. LIBICKI: No.

2 CHAIRMAN BAGGETT: Have any recommendations?

3 DR. LIBICKI: Fallowing in the summer is more
4 problematic from a emission standpoint. It's simply because
5 it is drier and hotter.

6 CHAIRMAN BAGGETT: So a fallowing regime that fallowed
7 in the fall or spring would be preferable than fallowing in
8 the summer?

9 DR. LIBICKI: It's generally true. We have had some
10 high wind events in the spring and the fall as well. It's
11 not easy to make a blanket statement.

12 CHAIRMAN BAGGETT: Did you look at mitigation so that
13 could reduce the impact of fallowing from an air quality
14 standpoint?

15 DR. LIBICKI: We didn't look at them in great detail
16 other than to note that many of them require the use of
17 water.

18 CHAIRMAN BAGGETT: You didn't look at, say -- let's
19 move to similar on-farm conservation programs have been
20 discussed at length in these proceedings. Do you have any
21 opinion on impact of drip irrigation systems versus
22 traditional flood irrigation on air quality?

23 DR. LIBICKI: No, I don't.

24 CHAIRMAN BAGGETT: You are not aware that any work has
25 been done to compare impact on PM-10?

1 DR. LIBICKI: It's certainly possible that work's been
2 done, but I am not aware of it.

3 CHAIRMAN BAGGETT: Along a similar vain, what about
4 changing cropping styles or patterns? Different crops have
5 different impacts?

6 DR. LIBICKI: There is some soil conservation studies
7 that talk about different types of crops, different heights
8 of rows, cropping perpendicular or crosswise to wind
9 direction that reduce emissions.

10 CHAIRMAN BAGGETT: Best management practices, I guess,
11 in the water world is what they will be called?

12 DR. LIBICKI: That is actually what they are called in
13 the agricultural air quality world.

14 CHAIRMAN BAGGETT: We already have them in ag. In air
15 world.

16 UNIDENTIFIED VOICE: RACMS and backums.

17 CHAIRMAN BAGGETT: So there is information out there.
18 Are you familiar with -- I guess I can ask you.

19 Do you know any place where we can find that,
20 references in terms of air quality, cropping?

21 DR. LIBICKI: Yes, the NCRS publishes, National Soil --
22 Soil and Conservation Resources -- I've lost the words for
23 it. It's a Department of Agricultural section.

24 CHAIRMAN BAGGETT: RCS.

25 DR. LIBICKI: Thank you.

1 CHAIRMAN BAGGETT: That is all the questions I have.

2 ---oOo---

3 CROSS-EXAMINATION OF COUNTY OF IMPERIAL

4 BY STAFF

5 MR. FECKO: Just a couple things. I think I am trying
6 to understand your role. What do you do for the County,
7 exactly? I guess one of the questions is, you're looking at
8 data from existing data points and basing your work on that.
9 Is that right, from air quality monitoring stations that are
10 in place already?

11 DR. LIBICKI: Yes. In addition to a fairly substantial
12 database on the lands out there, emissions, the industry,
13 the autos.

14 MR. FECKO: And you're concerned with PM-10 emissions
15 only or are you concerned what is in the air in the Imperial
16 Valley?

17 DR. LIBICKI: We are concerned with both emissions and
18 what is coming from other places. For this particular piece
19 of work we are only looking at PM-10.

20 MR. FECKO: That is all I have.

21 CHAIRMAN BAGGETT: Tom.

22 MR. PELTIER: Dr. Libicki, I just have one question. I
23 apologize if I mischaracterize the question that was
24 presented to you earlier. But I thought I heard Mr.
25 Fletcher ask you a question about an acre of exposed lake

1 bed at the Salton Sea was one-tenth as emissive as an acre
2 at Owens Lake.

3 Do you remember a question like that?

4 DR. LIBICKI: I think it was a question paraphrasing
5 Mr. Schade's work.

6 MR. PELTIER: Right. I'm just trying to get an idea.
7 We heard yesterday from Mr. Schade, and you'll just have to
8 take my word for this, that some areas were very emissive
9 and some were not at all. I'm just trying to get an
10 understanding.

11 Given that, is it reasonable or relevant to make an
12 acre for acre comparison between the Salton Sea and Owens?

13 DR. LIBICKI: The acre for acre comparison would
14 clearly be a function of emissivity. So those two things go
15 hand in hand. I don't know if that --

16 MR. PELTIER: The two things were emissivity and
17 acreage?

18 DR. LIBICKI: It is like a product of the two. If the
19 acreage is less, then the total emissions will be less. If
20 the emissivity is less per acre, then the total emissions
21 will be less, it is a product of the two.

22 MR. PELTIER: The reason I'm asking the question is it
23 seemed as though Mr. Schade's testimony was that there is
24 some areas that were definitely not emissive at all, and
25 some areas were very emissive. I am trying to get a feel

1 for -- it sounded to me from that that acreage maybe wasn't
2 the key factor.

3 Do you have a comment on that?

4 DR. LIBICKI: I think they are both equally important.
5 We multiply the two together to get the emissions, if you
6 will. They're both factors. If an acre has zero
7 emissivity, then it won't emit. They're both important.
8 The more acreage you have the less emissions you have to
9 have per acre to have the same emissions. It is a product
10 of the two. You multiply the two.

11 MR. PELTIER: My last question, I promise.

12 Do you agree with Mr. Schade's position that there is,
13 like, a threshold of emissivity below which some areas just
14 do not emit PM-10?

15 DR. LIBICKI: Having heard him speak before, I'm going
16 to conjecture on what he is referring to. Some areas crust
17 over, and for crusted areas, if they are not disturbed, and
18 that is an important if, then those areas are emissive.

19 MR. PELTIER: That covers it for me.

20 Thank you.

21 MR. ROSSMANN: I will redirect. Give me a second. I
22 want to respond to one of your questions. I want to see if
23 there is a map here that will help us.

24 CHAIRMAN BAGGETT: Take five.

25 (Break taken.)

1 CHAIRMAN BAGGETT: Back on the record.

2 Redirect of Dr. Libicki.

3 ---oOo---

4 REDIRECT EXAMINATION OF COUNTY OF IMPERIAL

5 BY MR. ROSSMANN

6 MR. ROSSMANN: Dr. Libicki, in response to a question
7 you stated that certain monitors in the Imperial Valley
8 routinely exceed EPA Standards. Would you explain that
9 phrase "routinely exceeds"?

10 DR. LIBICKI: Yes. That is actually the air quality
11 context, where you need one exceedance in three years in
12 order to be considered nonattainment.

13 MR. ROSSMANN: If the monitor recorded one exceedance
14 in two years or even in a three-year period, that would
15 categorize that as routinely exceeding?

16 DR. LIBICKI: That's correct. Historically it's been
17 over one in a three-year period.

18 MR. ROSSMANN: You are aware that the Salton Sea
19 prehistorically covered a much greater area than it does at
20 present?

21 DR. LIBICKI: Yes, I am.

22 MR. ROSSMANN: The emissivity, if you will, of that
23 part of the Imperial Valley that is now no longer covered
24 from the Sea, would be different from the emissivity of a
25 recently exposed shoreline; is that correct?

1 DR. LIBICKI: That is correct. If you're talking about
2 a historical period, geologically historical period.

3 MR. ROSSMANN: Would you elaborate on that answer?

4 DR. LIBICKI: That's it.

5 MR. ROSSMANN: Do you know the rate of evaporation in
6 Imperial County?

7 DR. LIBICKI: It's roughly eight feet a year. I've
8 seen different sources cite different values, but that is
9 approximately right.

10 MR. ROSSMANN: How about San Diego County, do you know
11 the rate there?

12 DR. LIBICKI: I know that it is less. I don't know
13 what it is.

14 MR. ROSSMANN: Before I came up here I placed in front
15 of you Page 3-243 from the EIR of Exhibit 55, Imperial
16 Exhibit 55. Could you turn that around so that the Chair
17 might see it. And that is a map that shows the Salton Sea.

18 Would you point to where Niland is.

19 DR. LIBICKI: There it is.

20 MR. ROSSMANN: That is the monitor that was omitted
21 from the EIR?

22 DR. LIBICKI: That's correct.

23 MR. ROSSMANN: Would you indicate the prevailing wind
24 direction in that portion of the Salton Sea?

25 DR. LIBICKI: Down here it goes generally east to

1 west.

2 CHAIRMAN BAGGETT: For the reporter's benefit, so that
3 is the bottom, the south side of the lake?

4 DR. LIBICKI: Yes, southeast side.

5 CHAIRMAN BAGGETT: And the prevailing winds go?

6 DR. LIBICKI: Generally go east to west, although they
7 turn as you get on top of the lake, and in the summertime
8 they come from the south to the north.

9 MR. ROSSMANN: It looked to me like you were indicating
10 from west to east?

11 DR. LIBICKI: They go back and forth.

12 MR. ROSSMANN: Are there prevailing winds in the
13 summertime at that point?

14 DR. LIBICKI: In the summertime the prevailing winds
15 will come up from the south.

16 MR. ROSSMANN: At other seasons?

17 DR. LIBICKI: East to west.

18 MR. ROSSMANN: Thank you, your Honor.

19 That is the only redirect that we have.

20 CHAIRMAN BAGGETT: Thank you.

21 On that very narrow scope.

22 Mr. Gilbert.

23 MR. GILBERT: No.

24 CHAIRMAN BAGGETT: Mr. Du Bois.

25 MR. DU BOIS: No.

1 CHAIRMAN BAGGETT: Mr. Rodegerdts.

2 MR. RODEGERDTS: No.

3 CHAIRMAN BAGGETT: Mr. Fletcher.

4 MR. FLETCHER: Just one question.

5 CHAIRMAN BAGGETT: Only on the questions asked.

6 There are only three questions.

7 ---oOo---

8 RE-CROSS-EXAMINATION OF COUNTY OF IMPERIAL

9 BY DEFENDERS OF WILDLIFE

10 BY MR. FLETCHER

11 MR. FLETCHER: I'm sorry, it is really just because I
12 am not sure I understand it, and I can't remember the
13 question precisely either.

14 Mr. Rossmann's last question which I think was which
15 is the prevailing wind directions in which seasons.
16 Could you just answer that, please?

17 DR. LIBICKI: Yes. They're east-west three-quarters of
18 the year. In the summertime they are from the south.

19 MR. FLETCHER: So there is no large portion of time that
20 it comes from -- it doesn't necessarily come from west a
21 great deal more often than it comes from the east or vice
22 versa?

23 DR. LIBICKI: I think the higher wind speeds actually
24 come from the west.

25 CHAIRMAN BAGGETT: Thank you.

1 Who is next?

2 PCL.

3 MS. DOUGLAS: No questions.

4 CHAIRMAN BAGGETT: Salton Sea, Mr. Hargreaves.

5 MR. HARGREAVES: No.

6 CHAIRMAN BAGGETT: Mr. Slater.

7 MR. SLATER: None.

8 CHAIRMAN BAGGETT: Mr. Osias.

9 MR. OSIAS: We have at least one or two questions.

10 ----oOo----

11 RE-CROSS-EXAMINATION OF COUNTY OF IMPERIAL

12 BY IMPERIAL IRRIGATION DISTRICT

13 BY MR. OSIAS

14 MR. OSIAS: Dr. Libicki, if the Sea had dropped a foot
15 in the last five years, would that exposed shoreline be
16 considered geologic time or would it be recent for purposes
17 of evaluating PM-10 risk?

18 DR. LIBICKI: For those purposes it would be recent.

19 MR. OSIAS: Thank you.

20 CHAIRMAN BAGGETT: No other questions. We can save and
21 do all your exhibits tomorrow.

22 Question?

23 MR. FECKO: I'm sorry, really quick clarification.

24 I want to clarify an answer to Mr. Fletcher's question
25 you were answering in response to that one recorder in

1 Niland?

2 DR. LIBICKI: No. I was answering generally in the
3 Valley.

4 MR. FECKO: Thanks.

5 MR. ROSSMANN: Your Honor, I think it might be prudent
6 to move hers into evidence so that she can be excused.

7 CHAIRMAN BAGGETT: Any objections?

8 MR. SLATER: No objection.

9 MR. ROSSMANN: That is Imperial No. 2.

10 CHAIRMAN BAGGETT: Imperial No. 2 is moved into
11 evidence.

12 Thank you very much.

13 Tomorrow, 9:00, we will finish up with 47 minutes and
14 24 seconds of Mr. Osias for the remaining two witnesses.
15 Then we will do redirect and recross and move on to Colorado
16 Tribes and one witness from Mr. Gilbert.

17 Also, maybe real quickly, can we --

18 Do people have any idea how many rebuttal witnesses,
19 what you're looking at? I know we aren't done yet. Do the
20 parties have any idea that you can give me a rough so we can
21 try to plan out.

22 MR. OSIAS: We do. We have one IID representative, Dr.
23 Smith and then a CH2MHill representative.

24 CHAIRMAN BAGGETT: So roughly an hour plus a few
25 questions.

1 Anybody else have anything they want to offer at this
2 time, any other parties have any thought?

3 MR. SLATER: Probably three witnesses on a panel,
4 roughly an hour.

5 CHAIRMAN BAGGETT: Anybody else have any thoughts yet
6 on witnesses for your rebuttal?

7 MR. FLETCHER: Sorry, I just don't.

8 CHAIRMAN BAGGETT: Maybe if you can think about it
9 tonight, tomorrow would be useful. What we will plan on
10 doing is coming back on Tuesday, the 28th at 1:00. And I
11 think, I would like to do that Tuesday, Wednesday, Thursday
12 and that concludes at this point, would conclude the
13 rebuttal, and recross or surrebuttal. If we can get all
14 that done, I hope in two and a half days. Then we have
15 certification of the EIR and a lot of other issues to talk
16 about at that point, and briefs and when do you want to
17 start, what we want and what form. I'm just trying to nail
18 the dates down.

19 Does that sound reasonable? Does anybody have any
20 problem with that rough schedule?

21 MR. ROSSMANN: No, sir. I think we discussed it among
22 counsel last night, and it was pretty agreeable.

23 CHAIRMAN BAGGETT: Try to finish up by the end of May.

24 MR. RODEGERDTS: The first day started at one and the
25 two subsequent days at nine.

1 CHAIRMAN BAGGETT: And back in the other building,
2 then. I have an emergency Board meeting at 10. If you
3 really want -- the Board, we are going to have a long
4 discussion on the joint point of diversion in the Delta,
5 our Board meeting. So you can come and join that before.

6 We can be off the record.

7 (Hearing adjourned at 3:05 p.m.)

8 ---oOo---

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

