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CRWQCB--CRBR Comments Regarding
Imperial Irrigation District Water Conservation and Transfer Project
Draft Habitat Conservation Plan,
Draft Environmental Impact Report/Environmental Impact Statement

Comment	Page	Paragraph*	Comment
1.			**General:** The California Regional Water Quality Control Board, Colorado River Basin Region (Regional Board) is charged by the Division 7 of the California Water Code (Porter-Cologne Water Quality Control Act) with establishing and enforcing water quality standards (WQS) for all waters within its region. The WQS consist of beneficial uses for the waters, water quality objectives to protect those uses, and other water quality control polices (e.g., State Antidegradation Policy, SWRCB Resolution 68-16). These standards also are approved by the State Board. For surface waters of the Nation, the WQS also are approved by the United States Environmental Protection Agency (USEPA). The USEPA has delegated to the State of California authority to implement and enforce the water quality control requirements prescribed in the Federal Water Pollution Control Act (a.k.a. the Clean Water Act, 33 U.S.C. 1251 et seq.) for surface waters of the nation. The Salton Sea, Alamo River, New River, and Imperial Irrigation District agricultural drains are State waters and waters of the United States. The WQS for the waters of the Region, including all surface waters within the Salton Sea Watershed, are contained in the Regional Board's Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) (CRWQCB--CRBR 1994). A copy of the Basin Plan is online at www.swrcb.ce.gov/rwqcb7. Other relevant water quality criteria within the context of this Proposed Project is contained in the State Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Policy for ISWEBE). The Colorado River Basin Region's Basin Plan is codified in Title 23, California Code of Regulations (CCR), Section 3960 et seq. The process for adopting and/or amending WQS is the Basin Planning process—a process subject to the requirements that CEQA establishes for Certified Regulatory Programs (i.e., Basin Plan amendments are CEQA Projects, unless otherwise explicitly exempted) (Pub. Resources Code, § 21000 et seq; 14 CCR 15251 et seq.) As described in detail in the following comments, the Proposed Project is in direct conflict with the WQS established by the Basin Plan[1]. CWA § 303(d) requires the Regional Board to: (1) identify the Region's waters that do not comply with water quality standards applicable to such waters, (2) rank the impaired water bodies taking into account factors including the severity of pollution and the uses made of such waters, and (3) establish Total Maximum Daily Loads (TMDLs) for those pollutants causing the impairments to ensure that impaired waters attain their beneficial

* Paragraph #1 starts at the top of a page, whether or not it was a full paragraph. Each bulleted section is considered a paragraph when separated by blank lines.

[1] The Imperial Irrigation District (IID) requested on several different occasions (e.g., 1998, 1999 and 2001) to downgrade the WQS for surface waters in Imperial County. For technical and legal reasons, the Regional Board denied the IID request (see copies of attached Regional Board letters responding to request).

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Comment noted.

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S5-4			uses. If the state fails to develop a TMDL, or if USEPA rejects the state's TMDL, USEPA must develop one (CWA § 303(d)(1)(D)(2) [33 USC § 1313(d)(1)(D)(2)], 40 CFR 130.6(c)). Upon TMDL approval by USEPA, the State is required to incorporate the TMDL, along with appropriate implementation measures, into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 40 CFR 130.7). The Basin Plan is part of the State Water Quality Management Plan. Regional Boards adopt TMDLs as Basin Plan amendments. Therefore, California law requires an implementation plan for each adopted TMDL (CWC § 13050(j)(3)). Pursuant to CWA § 303(d), the Regional Board has an approved CWA Section 303(d) List. In 1998, the Imperial Irrigation District (IID) was provided with a copy. Another copy of the List is attached.[2] Also, in accordance with CWA Section 303(d) requirements, the Regional Board adopted a: (1) sediment/silt TMDL for the Alamo River (CRWQCB–CRBR 2001a), which was approved by the State Board, and (2) pathogen TMDL for the New River (CRWQCB–CRBR 2001b), which also was approved the State Board. A sediment/silt TMDL for the New River is scheduled for consideration of adoption at the June 2002 Regional Board meeting. Other sediment/silt TMDLs for the Imperial Valley Drains and a nutrient TMDL for the Salton Sea currently are being developed in accordance with priority ranking established on the Regional Board's 1998 § 303(d) List and pursuant to funding. For the purposes of CEQA, TMDLs (which are incorporated into the Basin Plan via the Basin Plan amendment process) are defined as Projects.
S5-5	2.		**General:** In establishing a pre-determined amount for environmental mitigation (See Section 1.1 et seq., of Summary Of III/SDCWA Transfer Agreement in Appendix A of draft EIR/EIS), we believe the CEQA Lead Agency began the CEQA analysis by establishing the Findings required under 14 CCR 15091 or relied on Congress having a restoration project in place for the Salton Sea. We believe this is contrary to the spirit and requirements of CEQA. Consider the following: The draft EIR/EIS does not disclose the rationale that was used by the CEQA Lead Agency for determining that $15 million were needed to be set aside to mitigate environmental impacts[3]. Without it, we cannot fairly judge whether such an amount balances long-term (and potentially irreversible) water quality impacts identified in the draft EIR/EIS against relatively short-term economic benefits in the metropolitan areas receiving the water and for farmers participating in the conservation program. The final EIR/EIS must disclose the rationale. In light of the information contained in the draft EIR/EIS, the deficiencies discussed in the following comments, the uncertainty of the Salton Sea Restoration Project, the adopted TMDL Projects, and impending TMDL projects, we question whether that rationale, whatever it was, is still valid.

[2] The State Board currently is considering a revised 303(d) list. The IID received copies of the Regional Board's recommendations regarding the revised list.
[3] According to Appendix A, the IID is responsible for the mitigation of any environmental impacts of water conservation efforts within Imperial County (excluding the Colorado River between Imperial Dam and the northern county border) and upon the Salton Sea. The Agreement also provides that the IID has the right to terminate the Agreement in lieu of implementing environmental mitigation if: (a) the present value of projected mitigation expenditures might exceed $15 million at the time of completion of environmental review; or (b) if the present value of the cost of original mitigation obligations and unanticipated environmental consequences combined exceeds $30 million once water transfers commence.

Response to Comment S5-5

IID has not predetermined the amount of environmental mitigation that is required to implement the Project. The IID/SDCWA Transfer Agreement states certain contractual benchmarks which provide to each party an option to terminate the water transfer.

The contractual off-ramps included in the IID/SDCWA Transfer Agreement provide an option to IID to cancel the water transfer, both (1) prior to initial commencement of transfers, if the present value of projected mitigation costs exceeds $15 million after completion of environmental review, and (2) during the Project term, if the present value of the costs of the original mitigation plus unanticipated environmental consequences exceeds $30 million. The off-ramp amounts were established based upon the economic terms of the transfer transaction, including the purchase price to be paid for the water. They represent amounts that IID determined it could afford to pay given the transfer revenue. The off-ramp amounts are not limitations on the mitigation that IID, as Lead Agency, may determine is required based upon the Draft EIR/EIS, nor do they represent estimates of mitigation costs.

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S5-5			In the absence of the Project-level analysis required by CEQA (i.e., in the absence of data to arrive at a reasoned, informed, and balanced decision regarding project alternatives, impacts, and mitigation measures), one has to conclude that the CEQA Lead Agency implicitly is indicating that, if the project is to be approved with a pre-determined cap on environmental mitigation, the CEQA Lead Agency will have to use "overriding considerations" to avoid additional mitigation expense regardless of whether the mitigation is feasible (or affordable under normal circumstances) and how the lack of mitigation (or limited mitigation) makes implementation of other projects cost-prohibitive or less likely to succeed.
S5-6	3. ES-9	7	The draft EIR/EIS concludes that the Proposed Project is not inconsistent with a potential Salton Sea restoration project. Our review of the draft eir/eis indicates that this conclusion is premised, in part, on certain deficient analyses and that it also runs contrary to the: a. expressed will of Congress as described in its 1998 Sonny Bono Memorial Salton Sea Reclamation Act (Salton Sea Reclamation Act), b. requirements of CWA Section 303(d), c. requirements in the Porter-Cologne Water Quality Control Act, and d. Basin Plan water quality standards. Therefore, we find the draft EIR/EIS deficient in this regard. The final EIR/EIS must address the deficiencies. The following paragraphs elaborate on the deficiencies. The Salton Sea Reclamation Act, in part, directs the Secretary of Interior to evaluate projects to reclaim the Salton Sea that shall: 1) reduce and stabilize the overall salinity of the Salton Sea; 2) stabilize the surface elevation of the Salton Sea; 3) reclaim, in the long term, healthy fish and wildlife resources and their habitats; 4) enhance the potential for recreational uses and economic development of the Salton Sea; and 5) ensure the continued use of the Salton Sea as a reservoir for irrigation drainage. The implementation of the Proposed Project will accelerate the rate at which salinity concentrations increase in the first 5-15 years of the Proposed Project, which would render a potential Salton Sea restoration project significantly more difficult to implement because of the increase in cost associated with a saltier, smaller Sea. The Department of Interior's Program Manager for the Salton Sea Restoration Project[4] estimates that restoration cost will increase from the current range of $229 - $909 million to the range of $475 million - $1,357 million, if Sea inflows are reduced from 1.34 MAF/yr to 1.0 MAF/yr.
S5-7			Also, the Proposed Project (absent selection of Alternative 4) would result in overall worse water quality in the Sea's main tributaries and the Sea itself, in terms of selenium, total dissolved solids, and potentially nutrients. The significant adverse impacts of selenium on the Alamo River and the drains are acknowledged in the draft EIR/EIS—impacts which the Lead Agency termed unavoidable and unmitigatable. Our differences on the impacts on selenium on the Sea and New River aside, and regardless of Congress' intention, the Salton Sea Reclamation Act is clear: "...[3] reclaim, in the long term, healthy fish and wildlife resources and their habitats [our

[4] Personal communication between Regional Board staff and Michael Walker, 3/2002.

Response to Comment S5-6

Refer to the Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 9 of this Final EIR/EIS.

Response to Comment S5-7

Chemical and biological activity influencing concentrations of COCs in the Salton Sea are complex and there remains considerable debate regarding how these processes affect the interchange between COCs in the water column and those sequestered in sediment and organic material on the Sea floor. In spite of these uncertainties, it seems that the reduced loadings of selenium, TDS, TSS, nutrients and pesticides to the Sea under the Proposed Project would be unlikely to result in increased concentrations of these COCs in the water column.

In addition, the Habitat Conservation Strategy for the Salton Sea will maintain Sea levels under the Proposed Project at elevations that are equal to or higher than those projected in the Baseline. One of the benefits of maintaining elevations at these levels is that the exposure of Sea bottom sediments and organic matter to diffused oxygen under the Proposed Project will be no greater than under the projected Baseline. Therefore, COCs sequestered under anaerobic conditions in sediment and organic matter under the projected Baseline are likely to remain under the same conditions until at least 2030 under the Proposed Project.

With respect to TSS, nutrients and pesticides, because both the projected Baseline and the Proposed Project reduce tailwater discharge to IID drains, the project alternatives are expected to reduce TSS loadings to the drainage system and to the Sea from loadings observed historically. The Proposed Project results in the greatest reduction in tailwater and TSS loading of any of the alternatives, reductions that would be expected to lead to reduced nutrient and pesticide loading.

In addition, the mitigation strategy proposed for the Salton Sea will introduce water to maintain Sea levels at or above Baseline elevations. Although the sources of mitigation water may vary, they will have lower TSS concentrations than the tailwater discharges they are replacing. Therefore, while modeling has not been performed to

simulate TSS concentrations in the Salton Sea, there is no reason to believe that concentrations of TSS (or of pesticides and nutrients associated with TSS) would increase under the Proposed Project.

For additional information, please refer to the following Master Responses in Section 9 of this Final EIR/EIS: *Hydrology—Selenium Mitigation, Hydrology—Development of the Baseline, Biology—Timing of Implementation of Biological Mitigation Measures,* and *Hydrology—TMDLs.*

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			emphasis]..." Thus, to reclaim the tributaries at the expense of the Sea is contrary to the letter of the law. Because of the ecological nexus between the Sea and its tributaries, the converse is also true. That is to say, to reclaim the Sea at the expense of irreversible, significant adverse impacts on the tributaries and the habitat they support is contrary to the law also.
4.	ES-10, 3.1-124		The draft EIR/EIS limits the analyses under the "No Project" Alternative to a comparison of the TDS, selenium, and TSS concentrations that would result in the Alamo River Drainage Basin, New River Drainage Basin, tributaries drains, and Salton Sea as a consequence of implementing the project against the "baseline concentrations" in the aforementioned surface waters. The analyses are deficient for the purpose of arriving at an informed, reasoned decision for the Proposed Project as required by CEQA (14 CCR 15126.6 et seq.). The analyses are deficient for at least two reasons: (1) they presume that water quality impairments (e.g., violation of selenium and nutrient WQS) are likely to go unchecked; and (2) they ignore other water quality standards being impacted by constituents of concern (e.g., beneficial uses of the Sea and tributaries). The aforementioned impacts are not going unchecked. CEQA requires that for a project consisting, for example, of a proposed revision to a land use, regulatory plan, policy, or ongoing operation, the Lead Agency should consider the "no project" as the impacts resulting from the continuation of existing policies and plans into the future (14 CCR 15126.6(e)(3)(A)). If the Project is other than a land use or regulatory plan, for example, a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Thus, if disapproval of the project would result in predictable actions taken by others, such as the proposal of some other project, this "no project" consequence should be discussed (14 CCR 15126.6(e)(3)(B)). Current State and federal laws and regulations dictate that the impairments be addressed, and the State and Regional Boards are addressing impairments from agricultural runoff through various mechanisms, but principally through enforcement of the requirements of CWA Section 303(d) and the State Nonpoint Source Pollution Plan. TMDLs are the No. 1 priority for the State and Regional Boards. Under the "No Project" Alternative, the final EIR/EIS must discuss the significant water quality changes that would result from implementation of TMDLs and/or regulatory encouraged compliance (and waste discharge requirements where self-determined or regulatory encouraged compliance does not work with responsible parties) for the aforementioned surface waters. These include water quality improvements for sediment-, nutrient-, selenium-, pesticides-, and pathogen-impaired surface waters in the Imperial Valley. Similarly, it must consider the impacts of a potential Salton Sea restoration project, particularly since such a project may likely occur even if the Proposed Project is disapproved. Other WQS potentially impacted by the Proposed Project, but not adequately addressed by the draft EIR/EIS, are the REC I and REC II WQS for the Imperial Valley tributaries to the Salton Sea. The 303(d) list for the Region already identifies REC I and REC II uses as being impacted. The Proposed Project would worsen the impacts. Because the "No Project" Alternative in the draft EIR/EIS fails to consider the impacts resulting from actions likely to be taken by other entities, particularly actions by the Regional Board in terms of TMDLs and/or implementing Tiers II and/or III of the State Nonpoint Source Pollution Plan, if the project is disapproved, we find the analyses under the "No Project" Alternative deficient for the purposes of CEQA. The final EIR/EIS also must consider the

Response to Comment S5-8

The commenter objects to the No Project Alternative because it does not reflect the beneficial water quality changes that would result from adoption of future controls to remediate existing impairments, such as TMDLs. TMDLs and the other remediation measures will have impacts that, as yet, are too undetermined to include in the Baseline. By not having included these programs in the Baseline and in analysis of other alternatives, we have maintained a level field for comparison of impacts of implementation of various project alternatives versus those projected under the Baseline. For a discussion of the treatment of TMDLs in the EIR/EIS, see the Master Response on *Hydrology—-TMDLs* in Section 9 in this Final EIR/EIS. The commenter also objects to the No Project Alternative because it fails to include the impacts of a Salton Sea restoration project. See the Master Response on *Other—Relationship between the Proposed Project and Salton Sea Restoration Project*. For additional discussion of the No Project Alternative and its relationship to the Baseline, see the Master Response on *Hydrology--Development of the Baseline*.

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			potential water quality improvements (at least in terms of selenium) that may result in the irrigation water due to the ongoing efforts in the Uncompahgre area in Colorado (see attached staff memorandum). The improvements also translate into water quality improvements in the drainage water. This is evident if one considers, for example, that the total mass of selenium into the Imperial Valley would be reduced in proportion to the reductions achieved in the Uncompahgre area. The United States Department of the Interior- Bureau of Reclamation can provide additional information on the efforts, as it is the implementing agency for that project in Colorado. We acknowledge that Section 5 the draft EIR/EIS mentions TMDLs within its cumulative impact analyses. However, those analyses are also deficient.
5.	ES-11 ES-12	6 1 through 4	We believe that Alternative 4 would have fewer negative water quality impacts on the Salton Sea and its tributaries as compared to the effects of other alternatives. Obstacles to this Alternative, as indicated by the subject document, are IID's existing self-imposed anti-fallowing policy, which also is reflected in the terms of the water transfer agreement (hereafter "Agreement") between the IID and the SDCWA[5]. Implementation of Alternative 4 would allow extra time for potential restoration projects for the Sea to become established. In fact, Alternative 4 can be modified by expanding the amount of fallowed farmland by about 10,000 acres (from 50,000 to 60,000 acres), and using the extra water for restoring the Sea. The following paragraphs describe the basis for our conclusion: Current water inflows into the Salton Sea total about 1.34 MAF/yr. Of these flows, about 0.98 MAF/yr are from the IID drainage system (1.16 MAF/yr with inflows from Mexico). Approximately 67% (656,600 AF/yr) of IID's 0.98 MAF/yr contribution consists of tilewater (33% or 323,400 AF/yr) and tailwater (34% or 333,200 AF/yr). Salinity and selenium concentrations in tilewater are approximately 43,000 mg/L and about 25 ug/L, respectively. On the other hand, salinity and selenium concentrations in tailwater are approximately 700-850 mg/L and up to 2 ug/L, respectively. The Proposed Project (without fallowing or with little fallowing) will reduce the amount of tailwater flowing into drains and the Sea, to about 33,200 AF/yr. The ratio of tilewater to tailwater could theoretically change from about 1:1 to as much as 10:1. This will result in a significant increase of salinity and selenium concentrations in the tributaries to the rivers and the Sea itself (see also comment No. 24). If Alternative 4 were to be chosen, only about 93,000 AF/yr (46,500 AF/yr from tilewater and 46,500 AF/yr from tailwater) would be reduced from the IID drainage inflows into the Sea. Based on Figure 3.1-13 of the draft EIR/EIS, 66% of applied irrigation water is consumed by crops, 3% is lost to evaporation, and 31% forms tilewater and tailwater. Thirty-one percent (31%) of 300,000 AF/yr is 93,000 AF/yr. Therefore, because the ratio of tile- to tailwater would essentially remain the same as it is now, the water quality of inflows into the Sea most likely would stay the same. Fallowing a total of 60,000 acres of farmland (see the first paragraph of this comment), and using the conserved water to restore the Salton Sea, would increase the ratio of tailwater to tilewater in drains and thus the Sea to approximately 1.2: 1. Consequently, we feel this would not result in water

[5] The EIR/EIS indicates that the anti-fallowing terms of the Agreement are not applicable to the IID for the purposes of generating the "primary amount" of conserved water to be transferred and not applicable to the IID or farmers for the purposes of generating the additional "discretionary amount" of conserved water that potentially could be transferred.

Response to Comment S5-9

Comment noted.

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S5-9			quality deterioration in drains and the Sea. Based on the foregoing, after the No Project Alternative, we believe Alternative 4 is the environmentally superior alternative for the purposes of CEQA and, therefore, should be pursued to minimize adverse environmental impacts.
S5-10	6.	ES-14	6	The subject document states, "the beneficial effects [of fallowing] are not large enough to totally outweigh the adverse effects of fallowing." Section 3.14 and information contained in the Appendices of the draft EIR/EIS present an economic analysis to justify this conclusion. This notwithstanding, if Alternative 4 were to be implemented as described in the previous comment, at least at face value, the potential revenue generated by the modified project seemingly more than offsets the "adverse effects of fallowing." For example, assume 60,000 acres of marginal farmland (defined herein as water-intensive, low-producing land) were fallowed. About 180,000 acres of Imperial Valley farmland is grown with alfalfa, with a total income of about $120 million/year (Imperial County Agricultural Commissioner 2001). Therefore, the income generated by 60,000 acres planted with alfalfa is $40 million/year. The income generated by transferring up to 200,000 AF/yr of water to San Diego would be about $50 million/year ($250 per AF of water). The income generated from the transfer would: (a) offset economic impacts resulting from the loss of alfalfa sales, and (b) net about $10 million/year, which could be pumped back into the local economy and/or be used for the one-time expense of buying fallowed land. Prices for farmland in Imperial Valley currently are advertised for as low as $800-$1200/ac.
S5-11				Also, in Table 3.14-1, the draft EIR/EIS defines the Proposed Project's impacts around the Sea as "adverse change in regional economic conditions would be accelerated by up to 11 years." The basis for this determination, we believe, is the projected salinity increase. Regardless of the premise, the analysis is inadequate as it fails to consider other impacts directly caused by the Proposed Project. While we would stipulate that without an engineered restoration project the Sea will go super saline and, subsequently, eventually lose its fishery, under the No Project Alternative there would still be a Sea, albeit super saline, but of similar size and with improved water quality regarding other pollutants as a result of TMDLs. The Proposed Project, on the other hand, also would cause a drop in water elevation, which would result, in part, in a new shoreline that would be located more than a mile away from the current shoreline in certain areas around the Sea. This is a significant environmental impact in itself, and in turn it would have potentially significant water quality impacts (see Comment No. 5) and significant economic impacts on anyone using the Sea for recreational purposes and particularly on residents of communities in the immediate vicinity of the Sea (e.g., Salton Sea and Desert Shores). This is a significant impact on the REC I and REC II beneficial uses of the Sea. The final EIR/EIS explicitly must address the adverse changes in shoreline resulting from the Proposed Project. This, in turn, as discussed by experts that participated in the Salton Sea Science Advisory Committee workshop, would have significant air quality impacts. The significant air quality impacts also would impact the REC I and II uses of the Salton Sea and surface waters in the Imperial Valley. The final EIR/EIS must address these impacts.
S5-12				Additionally, we suggest that it would be more appropriate to factor in potential job gains if a Salton Sea

Response to Comment S5-10

Refer to the Master Response on Socioeconomics—*Crop Type Assumptions for Socioeconomic Analysis of Fallowing* in Section 9 of this Final EIR/EIS.

Response to Comment S5-11

Section 3.6, Recreation, in the Draft EIR/EIS describes mitigation measures that would offset the adverse impact of a smaller Sea in terms of recreation infrastructure. Section 3.1, Hydrology and Water Quality, thoroughly describes the water quality impacts of the Proposed Project and the alternatives, including the impacts associated with increasing salinity. Impacts to Biological Resources are discussed in Section 3.2. The Salton Sea Habitat Conservation Strategy is designed to provide water to the Sea to offset reductions in inflows caused by the Project until at least 2030. See the Master Response on *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 9 of this Final EIR/EIS. This strategy will avoid impacts to the sport fishery and delay air quality impacts resulting from exposed Salton Sea shoreline caused by the Project. (Refer to the Master Response on *Air Quality—Salton Sea Air Quality Monitoring and Mitigation Plan* in Section 9 of this Final EIR/EIS.)

Response to Comment S5-12

Although job gains could occur with implementation of the Salton Sea Restoration Project and the TMDL program, such gains are too speculative to predict quantitatively. Also, refer to Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 9 of this Final EIR/EIS.

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S5-12				restoration project is implemented. It should factor in increased recreational opportunities as a result of improved water quality in the tributaries to the Sea from TMDLs. This would present a more balanced picture on the socioeconomic impacts, not just in Imperial County, but also in the Salton Sea Watershed.
S5-13	7.	ES-17	Table ES-1, WQ-2	Increased selenium concentration is identified as a significant and unavoidable impact for all alternatives. The subject document concludes, "no reasonable mitigation is available". The aforementioned conclusion is technically and legally deficient for CEQA purposes (14 CCR 15126 et seq.). Consequently, we find any and all analyses, conclusions, and recommendations derived from the erroneous premise also deficient for CEQA purposes. The final EIR/EIS must address the deficiencies.
S5-14	8.	ES-40	Table ES-1, S-2	See previous comments on socioeconomic impacts.
S5-15	9.	1-42	5	We disagree with the conclusion that "the Proposed Project is not inconsistent with the subsequent implementation of a restoration project for the Salton Sea." See Comment No. 3, above. Also, implementation of the Proposed Project probably would substantially increase the salinity and selenium concentrations, and accordingly make the Restoration Project cost-prohibitive. Michael Walker, Program Manager for the Salton Sea Restoration Project, estimates that restoration cost will increase from the current range of $226 million - $606 million to the range of $475 million - $1,357 million if inflow is reduced from 1.34 MAF/yr to 1.0 MAF/yr.
S5-16	10.	1-45	1	Please note in the final EIR/EIS that the Sea, Alamo River, and drains already are impaired by selenium. The Proposed Project would worsen the impairment, and our analysis shows that it also would cause the New River to exceed its selenium WQS (see attached staff memorandum). CEQA requires an analysis of past, current, and reasonably foreseeable future actions that may affect the Proposed Project (14 CR 15130). While the subject document does contain a brief mention of CWA Section 303(d) and TMDLs, the document does not evaluate the Proposed Project's impact on: (a) TMDLs (i.e., the degree to which it makes development and implementation of TMDLs significantly more difficult[6]), (b) implementation measures to attain TMDL allocations, and (c) cumulative impacts. As noted previously, the analysis of TMDL actions must be included in the No Action/No Project Alternative and all other Alternatives pursuant to CEQA (14 CCR 15130). Therefore, we find the draft EIR/EIS deficient in this regard. The attached staff memorandum provices more details on regulatory concerns about the Proposed Project. The final EIR/EIS must address these deficiencies. Also, the final EIR/EIS must note that various proposed mitigation measures (e.g., construction of managed marsh habitat, construction of pupfish habitat) may require permits from the Regional Board, and the IID must apply for waste discharge requirements for them in accordance with Section 13260 of the California Water Code.
S5-17	11.	2-1	2	There is no clear project description. The Proposed Project includes two different scenarios, and the Salton Sea Portion of the HCP includes two possible approaches. "An accurate, stable and finite project description is the

[6] Consider, for example, that the projected increases in selenium concentrations that would result from the Proposed Project would certainly require a higher reduction of slenium concentrations in the drains, rivers, and potentially in the Salton Sea to bring the concentrations in compliance with the requirements of the CWA.

Response to Comment S5-13

Please refer to the Master Response on *Hydrology—Selenium Mitigation* in Section 9 of this Final EIR/EIS.

Response to Comment S5-14

Please refer to the responses given for Comments S5-10, S5-11, and S5-12.

Response to Comment S5-15

Refer to the Master Response on *Other—Relationship Between the Proposed Project and the Salton Sea Restoration Project* in Section 9 of this Final EIR/EIS.

Response to Comment S5-16

Please refer to the Master Response for *Hydrology—Selenium Mitigation* in Section 9.

Please refer to the Master Response for *Hydrology—TMDLs* in Section 9 in this Final EIR/EIS.

Comment noted.

Response to Comment S5-17

The commenter objects to the two implementation scenarios included in the Project Description and the two approaches to the Salton Sea included in the HCP. However, he also cites the important CEQA principles that the Project should not be segmented from related transactions, it should not be narrowly defined so as to preclude meaningful environmental assessment, and assessment should commence early on in the planning stages. The Draft EIR/EIS reflects the Lead Agencies' efforts to apply those three CEQA principles to a complex project. Unfortunately, two implementation scenarios are possible for the water conservation and transfer component, and we believe they must be disclosed and evaluated in the Draft EIR/EIS.

Response to Comment S5-17(continued)

The Draft EIR/EIS explains that the original Project, at the time of the NOP and NOI, consisted only of the IID/SDCWA transfer transaction. Subsequently, the QSA was negotiated among IID, MWD, CVWD, and state and federal representatives. The overall settlement of issues reflected in the QSA would, if implemented, modify the IID/SDCWA transfer to reduce the maximum amount to be conveyed to SDCWA and to provide for the transfer of up to 100 KAFY to CVWD and/or MWD. The QSA is subject to numerous conditions precedent, but it is nevertheless a potential implementation scenario. We do not believe it is appropriate to defer analysis of this scenario until a later point in time.

The HCP was also added to the Project, after the original NOP/NOI, and after consultation with the USFWS and CDFG, in order to offset impacts of the water conservation program on biological resources within the Imperial Valley and the Salton Sea. The HCP was attached to the Draft EIR and included in the Project Description in order to provide an overall assessment of both the impacts of the water conservation program and the voluntary biological enhancement measures which IID would undertake to reduce impacts to biological resources. We believe the EIR/EIS represents a good faith effort to comply with CEQA's purpose and intent.

	Comment	Page	Paragraph	Comment
S5-17				*sine qua non* of an informative and legally sufficient EIR" *(County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 190, 199-200.) Incessant shifts among project descriptions preclude the type of intelligent public participation that is one of CEQA's fundamental goals (*County of Inyo*, 71 Cal.App.3d at 197.) Where the lead agency is aware of "the interrelated character of the proposals," a selection of a narrow project description does not satisfy CEQA (*County of Inyo*, 71 Cal.App.3d at 199-200.) "Basic to environmental review is that it occur early enough in the planning stages of a project to enable environmental concerns to influence the project's program and design, yet late enough to provide meaningful information for environmental assessment" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738). A fixed project definition is essential to this analysis. CEQA defines "project description" broadly, to encompass the whole of a project. This prevents the EIR from "submerging" the impacts of a large project by chopping the project up into many smaller ones (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730.) The final EIR/EIS must address this deficiency.
S5-18	12.	2-46	6 and 7	The disposal of dredged sediments required for pond maintenance would be subject to permitting requirements contained in the Porter-Cologne Water Quality Act. The final EIR/EIS must note this and make appropriate provisions for the submittal of a report of waste discharge in accordance with Section 13260 of the California Water Code.
S5-19	13.	2-47	8	The proposed construction of pupfish habitat would require monitoring and maintenance of water quality conditions which would require substantial long-term human intervention with short response times. Also, there is insufficient analysis of how mitigation money will be used. CEQA (14 CCR 15126.4 (B)) states, "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time."
S5-20	14.	2-50	2	The proposed construction and maintenance of fish ponds is not specific enough. Detailed discussions of potential impacts are required by 14 CCR 15126 et al. (see also Comment No. 15).
S5-21	15.	3.1-1	1	Section 3.1 also must consider degradation of Salton Sea beneficial uses. By their very nature, WQOs are established to "ensure the reasonable protection of beneficial uses and the prevention of nuisance" (CWC Division 7, Section 13241). While we recognize the HCP need only consider listed and endangered species, the analyses presented in the draft EIR/EIS must address the transfer itself, as distinct from the HCP. These analyses are tilted towards listed and endangered species at the expense of other beneficial uses and laws. The beneficial uses for the subject waters are not limited to threatened and endangered species. Therefore, we find the draft EIR/EIS deficient for the purposes of the analyses required by CEQA (PRC 21005, 14 CCR 15125 & 15126.2). Also, Section 3.1 does not consider the relative water quality impacts of different BMTs.
S5-22	16.	3.1-1	Table 3.1-1, WQ-2	The draft EIR/EIS states that increased selenium concentration in IID drain discharges to the Alamo River are a "significant and unavoidable" impact of the Proposed Project. This suggests that IID has concluded that there are no available mitigation measures, or that the measures are not feasible. However, mitigation measures (i.e.,

Response to Comment S5-18

The previous Draft EIR/EIS has been revised to reflect this concern. This change is indicated in this Final EIR/EIS in Section 2.2.

Response to Comment S5-19

The comment refers to a summary contained in the Draft EIR/EIS that briefly describes the measures contained in the HCP that address mitigation of impacts to desert pupfish. Please see Sections 3.3.4.1 and 3.5.7 of the Draft HCP for additional detail on the measures for mitigating impacts to desert pupfish. Also, see Section 3.2 of the Draft EIR/EIS for an evaluation of the potential impacts to biological resources. Under the HCP, IID would construct a refugium pond consistent with the Desert Pupfish Recovery Plan (Section 3.3.4.1) and manage its drain channels for the benefit of pupfish, including channels that develop as the Salton Sea recedes. The refugium pond would be located and maintained based on requirements specified by CDFG. As described in Section 3.5.7 of the Draft HCP, IID also could benefit desert pupfish by managing the drain channels that extend onto exposed seabed when the Sea recedes. IID could conduct the management of the drains in the same manner that it manages and maintains current pupfish drains, or it could actively influence the channel configuration by constructing drain channels rather than allowing the drain water to cut channels on its own. The technique applied would be based on specific guidance provided by the HCP Implementation Team. In addition to these measures, IID will minimize selenium impacts on desert pupfish in its drains if studies contracted by USFWS determine that the selenium concentrations in the drains adversely affect pupfish. As described on page 3-125 of the Draft HCP, IID would reduce selenium concentrations in pupfish drains by splitting combined drain channels (drain/operational water), by providing limited biological treatment (including discharge from managed marsh), or by consolidating channels and blending flows. The technique chosen would be dependent upon the magnitude of the impact and site-specific constraints. The desert pupfish mitigation described in the HCP is not expected to require substantial long-term human intervention once the measures are implemented. Selenium monitoring in the pupfish drains would continue until the effectiveness of the measures could be demonstrated.