

STATE AGENCIES

Comments and Responses

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Gray Davis
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STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH
State Clearinghouse



Steven A. Nissen
DIRECTOR

ACKNOWLEDGEMENT OF RECEIPT

DATE: February 7, 2002

TO: Robert D. Thomson
Colorado River Water Quantification Settlement Agreement Co-lead
816 State Street
Suite 500
Santa Barbara, CA 93101

RE: Implementation of the Colorado River Water Quantification Settlement Agreement
SCH#: 2000061034

This is to acknowledge that the State Clearinghouse has received your environmental document for state review. The review period assigned by the State Clearinghouse is: 1

Review Start Date: January 30, 2002
Review End Date: March 15, 2002

We have distributed your document to the following agencies and departments:

Caltrans, Division of Transportation Planning
Colorado River Board
Department of Conservation
Department of Fish and Game, Region 5
Department of Fish and Game, Region 6
Department of Food and Agriculture
Department of Parks and Recreation
Department of Water Resources
Office of Historic Preservation
Regional Water Quality Control Board, Region 7
Resources Agency
State Lands Commission
State Water Resources Control Board, Division of Water Quality
State Water Resources Control Board, Division of Water Rights

The State Clearinghouse will provide a closing letter with any state agency comments to your attention on the date following the close of the review period.

Thank you for your participation in the State Clearinghouse review process.

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
916-445-0613 FAX 916-323-3018 WWW.OPR.CA.GOV/CLEARINGHOUSE.HTML



Office of Planning and Research, California State Clearinghouse, February 7, 2002

1. This comment is noted.



Gray Davis
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STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH



Steven A. Nissen
DIRECTOR

Memorandum

Date: March 6, 2002
To: All Reviewing Agencies
From: Scott Morgan, Project Analyst
Re: SCH # 2000061034
Implementation of the Colorado River Quantification Settlement
Agreement

The State Clearinghouse (SCH) distributed the above named EIR to your agency on January 30, 2002. On February 13, 2002 the SCH distributed a memorandum stating that the review period had been extended to April 14, 2002, that information was incorrect. The correct review period is:

Review period began: January 30, 2002

Review period ends: March 26, 2002

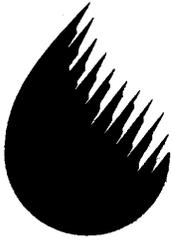
I apologize for this error, and request that you note the above information for your files.

CC: Robert D. Thomson
Colorado River Water Quantification Settlement Agreement Co-Lead
816 State Street, Suite 500
Santa Barbara, CA 93101

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
916-322-2318 FAX 916-324-9936 www.opr.ca.gov

Office of Planning and Research, California State Clearinghouse, March 6, 2002

1. This comment is noted.



SOUTHERN NEVADA
WATER AUTHORITY
QSA PEIR

Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

March 13, 2002

SAIC SANTA BARBARA
MAR 19 2002
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Administrative Office
1001 S. Valley View Blvd.
Las Vegas, Nevada 89153
Telephone: (702) 258-3939
Fax: (702) 258-3268

Project Office
1900 E. Flamingo, Ste. 170
Las Vegas, Nevada 89119
Telephone: (702) 862-3400
Fax: (702) 862-3470

Southern Nevada Water System
243 Lakeshore Road
Boulder City, NV 89005
Telephone: (702) 564-7697
Fax: (702) 564-7222

SUBJECT: DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE
IMPLEMENTATION OF THE COLORADO RIVER QUANTIFICATION
SETTLEMENT AGREEMENT

The Coachella Valley Water District, Imperial Irrigation District, Metropolitan Water District of Southern California, and San Diego County Water Authority have issued a Draft Environmental Impact Report for the proposed Colorado River Quantification Settlement Agreement (QSA). The QSA is a framework that will assist these agencies in reducing diversions of Colorado River water in normal years to California's basic apportionment.

The Southern Nevada Water Authority (Authority) represents the major water and wastewater purveyors in southern Nevada, including the Las Vegas Valley Water District, the Cities of Boulder City, Henderson, Las Vegas, and North Las Vegas, the Clark County Sanitation District, and the Big Bend Water District in Laughlin. These agencies serve over 1.5 million people in the southern Nevada region. The Authority and its members control over 90% of the State of Nevada's 300,000 acre-foot consumptive right from the Colorado River.

The Authority strongly supports completion of the QSA. The QSA is an important component for long-term management on the Lower Colorado River. In addition to providing a framework for reducing diversions of Colorado River water to California's basic apportionment, execution of the QSA is required for continued implementation of the Interim Surplus Guidelines. These guidelines were approved by the Secretary of the Interior in 2001 to provide a greater degree of predictability for California and the other Lower Basin States regarding surplus determinations on the Colorado River.

The Authority welcomes the leadership of the lead agencies in addressing the issue of their Lower Colorado River water demands and diversions. If you have any questions about these comments, please contact Kay Brothers at (702) 258-3176.

Sincerely,

David A. Donnelly
Deputy General Manager, Engineering/Operations

DAD:KB:LL:sh

BOARD OF DIRECTORS

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Myrna Williams
County Commissioner

Southern Nevada Water Authority, March 13, 2002

1. This letter indicates support for the QSA. No comments on the content of the PEIR were submitted.



State of California - The Resources Agency

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Eastern Sierra-Inland Deserts Region
330 Golden Shore, Suite 210
Long Beach, California 90802
(562) 590-5113

GRAY DAVIS, Governor



March 25, 2002

QSA PEIR Co-lead Agencies
c/o Science Applications International Corporation
Mr. Robert D. Thomson, Vice President
816 State Street, Suite 500
Santa Barbara, CA 93101

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MAR 27 2002

SAIC SANTA BARBARA

Dear Mr. Thomson:

**Comments on the 2002 Draft Program Environmental Impact Report for
Implementation of the Colorado River Quantification Settlement Agreement
(SCH2000061034)**

The California Department of Fish and Game (Department) has reviewed the above-referenced Draft Program Environmental Impact Report (DPEIR) and provides comments on fish and wildlife resources that may be affected by the proposed project. The Department is reviewing this document as a Trustee Agency with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. In that capacity, the Department provides the following comments on the proposed Quantification Settlement Agreement DPEIR.

The Department includes, by reference, our Notice of Preparation comment letter dated July 6, 2000. That letter identified issues which should be addressed.

The Department has the following comments regarding the DPEIR:

- The project as described uses an incorrect baseline;
- The DPEIR fails to adequately discuss the extent of currently utilized habitat for 21 birds which are threatened, endangered, or Species of Special Concern;
- The DPEIR should address how reduced groundwater levels will affect habitat conditions, and, in turn, suitability, availability, and reproductive success;
- The loss of the Salton Sea sportfishery will be a significant, yet mitigable impact;
- The DPEIR should address cumulative impacts of all past, current, and future projects, including the 1.574 mafy transfer.

These points and other issues will be discussed in more detail on the following pages.

Conserving California's Wildlife Since 1870

Mr. Robert D. Thomson, Vice President
March 25, 2002
Page Two

Project Description - Baseline Environmental Condition

As proposed, the project is comprised of 14 components (A thru N), which are summarized in Table 2.4-1 of the DPEIR. The proposed project is based on a series of agreements, which include water conservation/transfer and exchange projects among the Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), Metropolitan Water District (MWD), and San Diego County Water Authority (SDCWA) (referred to collectively as the participating agencies). The proposed project quantifies the amount of Colorado River water available to the participating agencies and calls for specific, changed distribution of that water among the agencies for a 75-year period. The Department's position is that the project description is inadequate because it uses the incorrect baseline for the water level in the Colorado River.

1

The water amounts proposed for transfer as they appear in Table 2.5-1, on Page 2-23 are not accurate. The *IID/MWD 1988 Agreement, IID/MWD/Palo Verde Irrigation District/CVWD 1989 Approval Agreement, and MWD/CVWD 1989 Agreement to Supplement Approval Agreement* (1988 Agreement) is included in the baseline, yet no project-level CEQA document ever analyzed the effects of that transfer to the Colorado River. In addition, the DPEIR now states that 20 kafy should be subtracted from the DPEIR total water volume in Table 2.5-1 (*Amendment to the IID/MWD 1988 Agreement and Subsequent Agreements*). There is no justification for the proposed 20 kafy credit.

2

The DPEIR states that the current diversion volumes remain unchanged and implies that the diversion is, therefore, exempt from CEQA. As proposed, in various CEQA documents, this replacement water volume will come from water conserved from downstream sources and transferred upstream to the existing facility. This will result in modification to the current source and volume of water diverted by MWD. The project description should include the diversion of the "new" water as a related activity. The proposed project involves not only the conservation of water, the transfer of water, and the delivery of water, but also the diversion of the "new" water.

3

Affected Environment and Environmental Impacts

The DPEIR states that it is appropriate to measure impacts of the proposed project against both current baseline and projected baseline conditions in order to provide a more accurate description of proposed project effects. The DPEIR asserts that this methodology will facilitate the process of isolating effects caused by the proposed project from those that are reasonably expected to result from existing conditions and trends. The Department disagrees with the proposed methodology. The impacts associated with implementing the DPEIR should not be compared only with those that would ultimately occur with build out, under adopted or on-going programs (e.g., increased water uses by

4

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other Lower Division states and flood control operations). Rather, the analysis should focus on existing physical conditions and how those conditions will be impacted by the proposed project, as required by CEQA. In this case, it may be appropriate to use the environmental conditions that existed prior to implementing the 1988 Agreement, before comparing the eventual future conditions that would result under build out (CEQA Guidelines, Section 15125(e)). The Department recommends that the Final QSA PEIR address this "shifting baseline" issue.

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A. Lower Colorado River

1. Special Status Biological Resources

This portion of the lower Colorado River (approximately 150 river miles) supports several hundred species of wildlife. Over 100 of these are special status species. The Lower Colorado River is an extremely important migratory corridor for birds including neo-tropical migrants, waterfowl, and migratory raptors. This portion of the lower Colorado River plays an invaluable role in fulfilling life history requirements and portions thereof for the above-mentioned species, providing vital breeding, foraging, migration, thermal regulation, and escape cover habitats.

5

The Department concurs with the DPEIR's description of the seriously degraded conditions that currently exist along the lower Colorado River. The DPEIR also states that the current condition of the lower Colorado River is a result of past and on-going human and natural factors leading to the current status of biological resources within the lower Colorado River (Page 3.2-26). Although there are existing environmental problems, it is the Department's position that the additional incremental effects from the project should nonetheless be considered significant. Moreover, the mere fact that the proposed project may be consistent with reasonably foreseeable future conditions, given well-defined trends and other parameters such as adopted or on-going programs (e.g., increased water uses by other Lower Division states and flood control operations), does not mean that its effects cannot be significant.

6

Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to the region that would be affected by the proposed project. The DPEIR fails to include an adequate discussion of the extent of currently utilized habitats (breeding, foraging, migratory, etc.) for the following California endangered and threatened species:

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- southwestern willow flycatcher (*Empidonax trailli extimus*)
- willow flycatcher (*Empidonax traillii*)
- western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)

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Page Four

Arizona bell's vireo (*Vireo bellii arizonae*)
elf owl (*Micrathene whitneyi*)
Gila woodpecker (*Melanerpes uropygialis*)
gilded flicker (*Colaptes auratus*)
gilded northern flicker (*Colaptes auratus chrysoides*)
California black rail (*laterallus jamaicensis coturniculus*)
Yuma clapper rail (*Rallus longirostros yumanensis*)
Swainson's hawk (*Buteo swainsoni*)
Greater Sandhill crane (*Grus Canadensis tadiba*)

7

In addition, the DPEIR fails to adequately discuss the extent of currently utilized habitats (breeding, foraging, migratory, etc.) for the following California Species of Special Concern:

8

Brown crested flycatcher (*Myiarchus tyrannulus*)
Cooper's hawk (*Accipiter cooperii*)
Crissal thrasher (*Toxostoma crissale*)
Fulvous whistling-duck (*Dendrocygna bicolor*)
Harris hawk (*Parabuteo unicinctus*)
Long-eared owl (*Asio otus*)
Summer tanager (*Piranga rubra*)
vermillion flycatcher (*Pyrocephalus rubinus*)
Yellow warbler (*Dendroica ptechia*)

The Department has documented reports and records of all of the above-mentioned species being present within and utilizing this portion of the lower Colorado River that the project will impact. The DPEIR does not show that the significant environmental impacts of the proposed project were adequately investigated and discussed and does not to consider the significant effects of the proposed project in the full environmental context (CEQA Guidelines, Section 15125(c)).

9

The change in points of diversion (less water traveling between Parker and Imperial Dams) will cause a drop in ground water levels. It is unclear from the DPEIR how this drop in ground water will affect the quality and extent of currently existing utilized riparian (defined by cottonwood, willow, tamarisk and their structural types) and wetland habitat, specifically micro-habitat components, for the above-listed Species of Special Concern and threatened and endangered species. Moisture in the soils likely benefits species distribution, abundance, and success by providing the proper humidity, ground cover, solar protection, and/or insect populations for food. The continued loss of existing riparian habitat, specifically micro-site conditions, must be considered in the

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context of species habitat suitability and the effects that the proposed project imposes on this habitat suitability and availability. 10

The Department recommends that the DPEIR address habitat modification resulting from drops in ground water elevations, specifically as it relates to micro-site habitat modification and effects to habitat suitability and availability for each of the above-listed threatened and endangered species and Species of Special Concern. Factors influencing habitat quality and thus nest site selection may include predation, competition, macro- and micro-habitat characteristics, or combinations of these factors. Because nest site selection is closely associated with fitness through reproduction, birds select habitats to maximize probability of nest success. Therefore, various micro-habitat characteristics important for quality nesting sites may ultimately determine nest success and productivity (Morrison et al. 1992). The Department recommends that the DPEIR address the proposed project's impacts on nest-site characteristics, suitability, quality, and availability as they relate to reproductive success for the above-listed threatened and endangered species and Species of Special Concern. The LCR MSCP includes species information which may be relevant; the Department recommends that the DPEIR incorporate information from that document as appropriate. 11

The Department provides the following additional comments:

- Species which are fully protected under California law cannot be taken or possessed, except in limited circumstances. 12
- Page 3.2-29 in the document states that the proposed project has the "potential" to reduce wetland and riparian habitat along the lower Colorado River that is used by amphibians, reptiles, riparian and marsh obligate birds, and mammals. The document also states that the "potential" loss of habitat would potentially be a significant impact, but can be fully mitigated by habitat restoration. The document should specify the impact that the project will have; for example, whether it will have "significant" environmental impact or "less-than-significant" environmental impact. 13
- The Department has a "no net loss" policy for riparian and wetlands habitat which is not recognized or addressed within the DPEIR. The DPEIR should address the potential impacts to the remaining 1,500 acres of existing cottonwood/willow habitat, and the existing acreage of wetlands within this reach of the river as it relates to the lowering of the groundwater table, resulting from the implementation of the proposed water transfer along the Colorado River. 14
- The reduction in groundwater levels may also increase the difficulty and the ability to be successful in future restoration efforts. The Department recommends that this 15

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issue be assessed as it relates to the successful implementation and feasibility of the proposed conservation measures. 15

- What are the potential affects to vegetation communities as you move away from the river and depth to groundwater increases. Can the assumption be made that roots have unlimited growth potential and will continue growing downward at rates commensurate with the rate of groundwater lowering? 16

2. Special Status Fish

Razorback sucker and bonytail chub are fully protected under California law, and therefore cannot be taken or possessed, except as authorized by the Fish and Game Commission for necessary scientific research. To ensure that take is completely avoided requirements and conditions of the Department’s *Statewide Fish Screening Policy* (June 2001) and the Department’s *Fish Screening Criteria* must be included and incorporated into the DPEIR. Those documents are available on the Department’s website, as follows: 17

Statewide Fish Screening Policy is located at <http://www.iep.ca.gov/cvffrt/DFGpolicy.htm>
Fish Screening Criteria is located at <http://www.iep.ca.gov/cvffrt/DFGCriteria2.htm>

A change in flow and location of diversions could alter water quality and mortality rates associated with entrainment of fish and other aquatic organisms. The DPEIR should include a thorough assessment of entrainment rates and reduced water quality and subsequent increases in mortality. These issues should be further addressed, and the DPEIR should discuss how potential take will be alleviated. 18

Table 3.2-2 incorrectly states the status of razorback sucker in California. Razorback sucker are California Endangered and California “Fully Protected”. 19

Table 3.2-1 incorrectly lists the desert pupfish as California “Fully Protected” species; please remove that designation from the table. 20

3. Biological Resources

Under CEQA the lead agency must consider, among other things, impacts to wildlife (both game and non-game) subject to the jurisdiction of the Department of Fish and Game and the ecological communities in which they reside. This document should acknowledge and address impacts to species not carrying special designation (threatened, endangered, rare, fully protected, Species of Special Concern, etc.). Please address, with specifics, potential impacts and mitigation measures for these species. 21

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Page Seven

Unavoidable impacts should be mitigated through acquisition and protection, in perpetuity, of high-quality biological habitat.

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4. Recreation

Boating, hunting, and fishing opportunities will be affected by this Project. Confluence zones between the mainstream and the backwaters could be compromised for wildlife and boats due to the lowered water surface elevations. Launch ramps will be further exposed and at times unusable due to the lowered water surface elevations and reduced duration of peak flows. Loss of hunting and fishing opportunities could be directly attributable to loss of moist soil units, marsh, and backwater habitats for sportfishing and waterfowl hunting. Lowered water surface elevations and reduced duration of peak flows will further expose mainstream sandbars and reduce navigational safety.

22

B. Salton Sea

The Department believes that the exacerbated loss of the Salton Sea sportfishery, which will result from this project, will be a significant, yet mitigable impact. The Department's determination that there will be "significant impacts" is described as follows. The DPEIR has conflicting statements regarding this issue that need to be resolved in the document. For example, the "Executive Summary", Page ES-7, supports the Department's contention, yet in the same section, Table ES-1 on Page ES-45 (Summary of Impacts and Mitigation, Biological Resources), the statement is made that "The impact to fisheries (more rapid loss) is considered less than significant since these species are not native to the Salton Sea." In Table ES-1, under the Recreational Resources section, Page ES-46, the document states that "Increased salinity would hasten the decrease in the number of fish that live in the Salton Sea, adversely affecting sportfishing opportunities. This would be a significant impact." These and other sections of the DPEIR should be modified to accurately reflect the on-going discussions between the participating agencies and the Department regarding mitigation strategies (described below) for the exacerbated loss of the Salton Sea sportfishery.

23

Fully protected species at the Salton Sea cannot be taken or possessed under California law, except in limited circumstances.

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Mitigation Measures

A. Lower Colorado River

The mitigation measures on page 3.2-37 state that they were developed using a habitat-based approach with the federally listed southwestern willow flycatcher as a

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representative riparian species, that the two-tiered conservation plan was intended to minimize the impact to southwestern willow flycatcher and other riparian species, and that implementation of the proposed mitigation measures would mitigate potential impacts to species using similar habitat types along the lower Colorado River to less-than-significant. The proposed mitigation measures are inadequate for the following reasons: first, the U.S. Fish and Wildlife Service (USFWS) only has the ability to consult on federally threatened, endangered, and candidate species. Therefore, their consultation was limited to only the southwestern willow flycatcher, Yuma clapper rail, razorback sucker (*Xyrauchen texanus*), and bonytail chub (*Gila elegans*). Second, the mitigation measures were not developed using a habitat-based approach and were only intended to mitigate for effects to these four species on a species-by-species basis. Pages 45 through 50 of the USFWS 2001 Biological Opinion (BO) (ref: 2-21-00-F-273) elaborate and clarify the intent and applicability of the proposed mitigation measures identified on Page 3.2-37 of the DPEIR. It is the Department's position that the mitigation (in both the BO and the DPEIR) will not mitigate to a level of less-than-significant for all of the California threatened, endangered, and Species of Special Concern listed in Table 3.2-3 of the DPEIR.

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B. Salton Sea

The Salton Sea Mitigation Strategy 1, on Page 3.2- 38, should be changed to read as follows: "A hatchery would be constructed in phases, if needed, for the following three purposes (key points): 1) to produce and stock into the Salton Sea current sportfish species, once egg and larval survival can no longer naturally occur and to provide a put-and-grow sportfishery and forage base for fish-eating birds until sportfish can no longer grow or survive; 2) should the Sea's sportfish be unable to survive elevated salinities, to provide a genetic stock for re-population of the Sea, in the event of the implementation of a long-term Salton Sea restoration project; and 3) to utilize the hatchery to produce tilapia or some other fish for placement in artificially constructed grow-out and/or feeding ponds to maintain the presence and use of the area by fish-eating birds."

26

The Biological Resources Section - Impacts, on page 3.2-31, first paragraph, states that "This impact to fisheries (more rapid loss) is considered less than significant since these species are not native to the Salton Sea." The Department disagrees with this statement for the following reasons. Department of Fish and Game-published reports document that the sportfish of the Salton Sea make up one of California's highest-quality sportfisheries (Black 1974; Black 1985). This self-sustaining fishery has been utilized by anglers, 75% of whom come from outside of Imperial and Riverside counties, for approximately 50 years. The Department believes that shortening the life span of the existing sportfishery at the Salton Sea by as much as 19 years, due to the transfer of conserved water out of the Salton Sea Basin, is a significant impact that must

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be addressed in the DPEIR and in any subsequent CEQA documents. Therefore, the Department requests that the above-referenced portion of the DPEIR and all pertinent sections be modified to reflect that unless mitigated, significant impacts to the sportfishery of the Salton Sea will occur from this project.

27

Unless the second paragraph on Page 3.2-38 is amended to include the purposes of the hatchery as listed above, there will be significant unavoidable adverse impacts to the Salton Sea sportfishery. If these changes are not made to this section of the document, then Section 3.2.4 on page 3.2-38 should be amended to reflect these impacts.

28

Cumulative Impact Analysis

The DPEIR should discuss whether the project's incremental effect is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (CEQA Guidelines Section 15065(c)). As it is described in the DPEIR, when viewed in connection with the effects of other projects, the proposed project will have an incremental effect which is "cumulatively considerable." Therefore, the effect of the project must be considered significant. The DPEIR fails to include an adequate discussion of all projects warranting attention as required by CEQA Guidelines Section 15130(b)(1)(A) and (B).

29

Lower Colorado River

The DPEIR constitutes a portion of a much larger project which involves a 1.574 mafy change in point of diversion from Imperial Dam to Parker Dam (1.574 mafy water transfer). The Final QSA PEIR should include the 1.574 mafy water transfer project in the Cumulative Impact Analysis and re-evaluate cumulative impacts according to the CEQA Guidelines to adequately address cumulatively considerable impacts and develop appropriate proportional mitigation measures necessary to reduce impacts to a level of less-than-significant.

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The USFWS confirmed that the QSA must be looked at as only part of the larger transfer of 1.574 mafy. The USFWS relied on the U.S. Bureau of Reclamation (USBR) 2000 Final Biological Assessment for the Interim Surplus Criteria, Secretarial Implementation Agreements for California Water Plan Components and Conservation Measures (BA) and the projections presented therein, as the basis for the issuance of the USFWS 2001 (BO) (ref: 2-21-00-F-273) pursuant to Section 7 of the Federal Endangered Species Act. The BA states:

31

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"... impacts of smaller amounts of diversions are calculated proportional to the 1.574 maf for the following reasons:

31

Future changes in point of diversion may occur in increments from as little as 25 kaf initially to much larger figures. It could be argued, for instance, a change in point of diversion of 25 kaf annually is hardly measurable with insignificant environmental impacts; . . . The argument could then be made for the next 25 kaf (no measurable impact) and so on. Eventually, however, the sum total of these changes in point of diversion will result in measurable ecological changes, even though individually each change is insignificant."

The 1.574 mafy water transfer clearly qualifies as a "probable future project" under CEQA. The proposed DPEIR project and associated water transfers constitute approximately one third of the 1.574 mafy water transfer project. As stated above, the DPEIR should reevaluate cumulative impacts to determine whether the effects are "cumulatively considerable" under CEQA. Once all cumulative effects are identified, the impacts to biological resources of the lower Colorado River may not be fully mitigated through the implementation of the identified mitigation measures (DPEIR, Page 3.2-37), because the DPEIR failed to include the transfer of the 1.574 mafy in the *Cumulative Impact Analysis* and may have underestimated the impacts to biological resources along the lower Colorado River (CEQA Guidelines, Section 15130(b)(3)).

32

The 1988 Agreement and the effects of those projects on the Colorado River should be included in the Cumulative Impact Analysis of the DPEIR.

33

The Department recommends that the DPEIR incorporate relevant information from the draft Lower Colorado River Multi-species Conservation Plan (LCR MSCP) as for the following reasons: 1) participating agencies were parties to the planning and development of the LCR MSCP and its associated covered actions; and 2) much of the needed impact analysis and mitigation measures (not limited to federally listed species) are reasonably well developed, and would apply to the DPEIR.

34

Salton Sea

The DPEIR should include an analysis of the cumulative effects of the proposed project along with the 1988 Agreement on the Salton Sea and its resources. The Final EIR for that project determined that the impacts of lowered elevation and higher salinity of the Salton Sea resulting from reduced inflows were a significant environmental effect of the project which could not be avoided. Overriding considerations were adopted for that effect (Final Environmental Impact Report for Proposed Water Conservation Program and Initial Water Transfer Memorandum 12-3-96, Exhibit A: Findings and

35

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Statement of Overriding Considerations for the Proposed Water Conservation Program). The DPEIR does not address the cumulative effect of this past project on the resources of the Salton Sea. The Department requests that an analysis be done that determines the effect of this past project on the Salton Sea combined with the proposed project. This should include data in the form of modeled salinity increases and year in which they would have been reached without the 1988 Agreement. 35

In Section 4.2.15 (Mexicali Wastewater System Improvements), the DPEIR concludes that the Mexicali Wastewater System Improvements project, along with the proposed project, could result in potentially significant cumulative impacts to biological resources and recreational resources of the Salton Sea as a result of increased salinity. It further concludes that the mitigation associated with the proposed project (that provided by the Imperial Irrigation District Water Transfer and Conservation Project) would reduce the significant cumulative impacts to less-than-significant levels. The Department requests that data in the form of modeled salinity increases, and the year in which they will be reached, be provided to support this conclusion. The mitigation provided in the IID project only addresses the increased salinity from that project. The additional increase from the Mexicali project also needs to be modeled and provided. The conclusion of less-than-significant would then need to be based on that data. 36

In Section 4.2.16 [Coachella Valley Water Management Plan (Non-QSA Part)], the DPEIR states that the Coachella Valley Water Management Plan (CVWMP) may produce net beneficial impacts to the Salton Sea through an increase in flows of lower salinity water in the drains, yet the Draft EIR for the Imperial Irrigation District Water Transfer and Conservation Project and the Coachella Valley Water Management Plan both state that the CVWMP will result in increased salinity in the drains and, therefore, an increase in the salinity of the Salton Sea. This needs to be corrected in the DPEIR, and the cumulative impacts need to be modeled along with the Mexicali project and the 1988 Agreement before a determination can be made that the proposed project has mitigated the impacts to less-than-significant. 37

Alternatives to the Proposed Projects

The Department commends the participating agencies for exploring several alternatives in order to minimize and/or avoid significant impacts to biological resources and ecological processes associated with the proposed project. Alternative 2A, in combination with alternative 4, offer substantial environmental advantages (as described below) over the proposed project, while not limiting the ability to accomplish most of the basic objectives of the proposed project (CEQA Guidelines, Section 15126.6(c)). These alternatives should be examined more closely. 38

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Lower Colorado River

As proposed, Alternative 2A would meet most of the basic project objectives and would avoid cumulatively, considerable biological impacts to the lower Colorado River. Ultimately, Alternative 2A would keep the water in the lower Colorado River, therefore avoiding cumulatively considerable impacts which would no longer require costly mitigation measures. Furthermore, the financial obligation that would have otherwise been spent on mitigating for impacts along the lower Colorado River could now be spent on construction costs associated with connecting the Coachella Canal to the Colorado River Aqueduct. The biological impacts associated with this construction corridor are relatively minor compared to that of the lower Colorado River, and the current degraded environmental conditions of the lower Colorado River would be spared additional incremental impacts from the DPEIR. The DPEIR identifies potential biological impacts to the Coachella Valley fringe-toed lizard, desert tortoise, and the peninsular bighorn sheep. The proposed construction corridor in Alternative 2A is outside the known range of the Coachella Valley fringe-toed lizard and the peninsular bighorn sheep, thus impacts to these species would be avoided. Project impacts to the desert tortoise within this 7-10 mile long, 150- to 200-foot construction corridor can be avoided and/or minimized to a less-than-significant impact with appropriate mitigation measures. 39

Salton Sea

The Department agrees with the comments made on Pages 3.2 -38 and 3.6 - 13 that state that the implementation of Mitigation Strategy 2 (Use of Conserved Water as Mitigation) for the proposed project would avoid biological impacts to fish-eating birds and to the sportfishery of the Salton Sea. The Department concurs that the "proposed project may be environmentally superior to the other alternatives" (page 5-22), but only if Mitigation Strategy 2 is selected as the mitigation measure, not Mitigation Strategy 1. If the latter is selected, then the Department supports the selection of Alternative 4 as the "environmentally superior alternative". 40

Growth-Inducing Impacts

The reliability of water facilitated by this transfer could be construed as growth inducing even though there is potentially no "new" water in the SDCWA or MWD service areas. Section 1.1 of the DPEIR states that the region of influence (ROI) is comprised of the areas that are affected by the QSA water conservation and transfer components, i.e., the water service areas of the four co-lead agencies. The ROI also includes areas adjacent to the Colorado River between Lake Mead and Imperial Dam and the areas of conveyance and distribution of Colorado River water by the co-lead agencies, particularly the Colorado River Aqueduct (CRA), All American Canal (AAC), and Coachella Canal. 41

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Accordingly, both the indirect and direct effects of the transfer on all of these areas needs to be addressed.

The DPEIR should discuss: 1) the ways in which the project could foster economic or population growth; 2) how having a reliable water source could remove obstacles to population growth; and 3) how the reliable source of water may encourage and facilitate other activities which could significantly affect the environment, either individually or cumulatively (CEQA Guidelines Section 15126.2(d)). The participating agencies to the QSA have determined that the QSA fulfills the objective of facilitating agreements and actions which, when implemented, would enhance the certainty and reliability of Colorado River water supplies and would assist these agencies in meeting their water demands within California's apportionment of Colorado River water. Section 1.2, Pg. 1-4 of the DEIR/DEIS IID/SDCWA Transfer Agreement (which is included in the QSA DPEIR by reference) fulfills the SDCWA objective of acquiring an independent, alternate, long-term water supply that provides drought protection and increased reliability for municipal, domestic, and agricultural uses. 42

Fish and Game Permits

In connection with this project, the Department will be acting as a Trustee Agency for fish, plant, and wildlife resources, and as a Responsible Agency to issue an incidental take permit (California Endangered Species Act (CESA) Permit) for threatened and endangered species, and to issue a Streambed Alteration Agreement. 43

The Department requests that the participating agencies conduct a Property Analysis Record (PAR) for all properties that they intend to purchase and/or manage for mitigation. The PAR program can be obtained from the Center for Natural Lands Management, a non-profit corporation whose purpose is the long-term stewardship of lands set aside for the mitigation of native species and their habitats. The PAR program will allow the participating agencies (and the Department) to evaluate the management tasks and accompanying costs of conservation and mitigation properties based on their biological requirements and your permit requirements. A review of existing documentation on the properties and field surveys (to be conducted by the participating agencies) are to be used to determine the restoration and management activities necessary to maintain the resource as an integrated functioning ecosystem in perpetuity. Each management activity can be budgeted according to its timing, incidence, labor supplies, and administration. From this information, annual costs appropriate for enhancements, endowments, and any special conditions that may exist, can be estimated. 44

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A. CESA

The take of threatened and endangered species is prohibited under CESA . The Department may authorize the take of a listed species for a project if the project has the potential to take a species listed under CESA. Certain conditions must be met for a permit to be issue; all impacts of the take must be minimized and fully mitigated. In addition, the impacts to the species and mitigation measures must be addressed on a species-by-species basis. Early consultation with the Department is encouraged, as modification to the proposed project and mitigation measures may be required in order to obtain a CESA Permit. | 45

When an agency makes findings on significant effects identified in an EIR, an agency must also approve a program for reporting or monitoring mitigation measures that were adopted or made conditions of project approval (CEQA Guidelines Section 15097). A plan to monitor compliance with minimization and mitigation measures and the effectiveness of those measures will also be required as part of the CESA Permit. As the Responsible Agency under CESA, the Department may rely on that plan when it issues the CESA Permit. | 46

Page 3.2-37 of the DPEIR lists the biological conservation measures from the USFWS 2001BO (ref: 2-21-00-F-273) to offset potential impacts from the change in point of delivery (400 kafy from Imperial Dam to Parker Dam), which were developed and agreed to by the United States Bureau of Reclamation (USBR) and the USFWS for potential impacts that could occur to federally listed fish and wildlife species and their associated critical habitats. State-listed species and those species under the purview of CEQA were not the subject of that consultation. The consultation for the BO occurred without Department participation. The conservation measures identified in the BO do not meet the standard of CESA , which requires full mitigation, nor do they consider all of the species and habitats which must be considered under CEQA and CESA . CESA conservation and avoidance measures must be fully developed, and the Department is committed to working closely with the participating agencies to develop and identify acceptable conservation opportunities which meet the criteria for both CEQA and CESA . | 47

All conservation measures (mitigation) need to be labeled in "perpetuity".

B. Streambed Alteration Agreement - Fish and Game Code 1600 et seq.

A Streambed Alteration Agreement may be needed if a project will divert, obstruct, or change the natural flow of any river, stream, or lake designated by the Department, and that project will affect existing fish or wildlife resources. | 48

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The Department appreciates the opportunity to comment on this project. The Department requests responses for comments raised in this comment letter. Questions regarding this letter should be directed to Mr. Chris Hayes, Senior Environmental Scientist, at (760) 922-6508.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Taucher", written over a light blue horizontal line.

Curt Taucher
Regional Manager

cc: State Clearinghouse

Mr. Chris Hayes
Department of Fish and Game
Blythe, CA

California Department of Fish and Game, March 25, 2002

1. The California Department of Fish and Game (CDFG) accurately describes the major components of the Proposed Project. The project description is adequate, and the PEIR uses the correct baseline in the environmental analysis. Specific responses to this issue are provided in CDFG responses 2, 3, and 4.
2. The water amounts for the proposed transfer are correct as shown in Table 2.5-1. The referenced agreements were analyzed in project-level CEQA documents. As noted in Table 2.4-1 of the PEIR, project-level CEQA analysis for the IID/MWD 1988 Agreement was included in the 1986 IID Proposed Water Conservation Program and Initial Water Transfer EIR; project-level CEQA analysis for the IID/MWD 1988 Agreement was included in the 1994 IID Modified East Lowline and Trifolium Interceptors, and Completion Projects EIR; and project-level CEQA analysis for MWD's use of conserved water for the 1989 Approval Agreement was included in the 1986 IID Proposed Water Conservation Program and Initial Water Transfer EIR. The existing IID/MWD Agreement is not part of the QSA and the CEQA process for that Agreement has already been completed. Therefore, it is not appropriate to include consideration of this Agreement in the PEIR. However, under the Proposed Project a change in the existing IID/MWD program would result. This change would provide to CVWD 20,000 acre-feet of water conserved under this ongoing program. This proposed modification is included as a QSA component and is evaluated in the PEIR.

The CDFG's assertion that the baseline condition for the QSA PEIR should reflect the pre-1988 IID/MWD water conservation program is inconsistent with the methodology established under CEQA. The existing environmental setting reflects the ongoing IID/MWD water conservation program. Water has been made available to MWD under this program since 1990. The actual measured flow in the River during 1999, or based on a 10-year average from 1990-1999 below Parker Dam, reflects the changes in flow volume associated with the 1988 IID/MWD program. Therefore, it is appropriate to use these values as the baseline condition in the QSA PEIR. The proposed project would modify the terms of the 1988 IID/MWD program (included in the baseline) so that CVWD would receive an additional 20 thousand acre feet per year (KAFY) of water conserved by that program that is currently being diverted at Parker Dam for the benefit of MWD users. Under the proposed project this 20 KAFY would continue to be conserved by the IID/MWD program but would be diverted at Imperial Dam and transported to the CVWD service area via the All-American and Coachella Canals. Thus, there will be an increase of 20 KAFY in the river reach from Parker Dam to Imperial Dam that does not exist today. Table 2.5-1 accurately accounts for the potential changes in Colorado River flows between Parker and Imperial dams as a result of the proposed project.

3. The commenter is incorrect in the assumption that the source and volume of water diverted by MWD would be modified. As described in the PEIR, California is required to reduce its diversion from the Colorado River in years designated as shortage, normal, or partial surplus under the Law of the River. The Proposed Project provides mechanisms for California to reduce its diversions. These mechanisms include water conservation and water exchanges. MWD would continue to divert from Lake Havasu on the Colorado

River, and no new facilities would be required. Furthermore, the quantity of water diverted by MWD would not increase from its current or recent levels. The decrease in flows between Parker and Imperial dams represents the effect of conservation and water transfers from “downstream sources,” but is not “new” water and should not be treated as such in terms of MWD’s diversions. The potential environmental impacts resulting from the proposed change in point of diversion from Imperial Dam to Parker Dam have been adequately analyzed in the PEIR.

4. State CEQA Guidelines (Section 15125) state that the existing environmental setting at the time the NOP is published is *normally* the baseline used to determine whether impacts are significant. This means there are some circumstances in which a different baseline is appropriate. For example, see *Save our Peninsula v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, in which the court held that an acceptable baseline could differ from conditions at the time the NOP is published. In the QSA PEIR, different baselines were selected for different resources to most accurately describe the QSA’s impacts.

For analyzing impacts of the QSA on the Salton Sea, a future baseline was selected to account for changes in the Salton Sea that are reasonably certain to occur by the time the project is fully implemented and during project implementation. For the QSA, full implementation would start in 25 years. Over the QSA period, incremental impacts of the QSA are most appropriately compared to a forecasted future environmental baseline, which is different from the existing setting.

For analyzing impacts on the Colorado River, an existing baseline was selected, representing conditions at the time the Notice of Preparation was published in the year 2000. It is not appropriate to use a past baseline of 1988 conditions for the reasons explained in the response to CDFG comment 2.

5. This comment is generally consistent with the discussion of the biological resources along the Colorado River provided in section 3.2 of the PEIR. No additional response is necessary.
6. The impact analysis in the PEIR does specifically address the incremental impact of the change in flows of the Colorado River associated with the implementation of the Proposed Project (see section 3.2.2.3). It also identifies significant impacts to certain habitats and identifies measures to mitigate these impacts to less than significant levels in section 3.2.3.
7. The PEIR provides baseline information regarding these species in section 3.2.1.6 and analyzes impacts in section 3.2.2.3 using a habitat-based approach. Hydrologic modeling performed by the Bureau determined that potential impacts were primarily confined to four habitat types: open water, riparian vegetation with moist soils, backwaters and emergent marsh. A variety of species utilize these habitat types. Some of these species have protected status under state and federal endangered species acts. As noted in section 3.2.2.3, the discussion in the PEIR is not meant to be exhaustive, but rather to highlight a few high-profile species that utilize certain habitats likely to be affected by the Proposed project. Additional discussion on selected species using these same habitats is provided below, as requested. However, this information is provided as clarification only and does not change the conclusions of the impact analysis, which indicates that impacts to such

species are potentially significant. Mitigation measures were included in the PEIR (section 3.2.3) to reduce this potentially significant impact to less than significant.

Arizona Bell's vireo – Along the lower Colorado River, this subspecies is closely associated with early-successional cottonwood-willow habitat. Any impacts to the habitat of the species would be mitigated by measures included in the PEIR.

California black rail – Key habitat components for this species include shallow water, with a preference for saturated versus inundated soil conditions, and high stem density (Rosenberg *et al.* 1991, Flores and Eddleman 1995 in MSCP 2001). Consideration of these habitat variables can be incorporated into the design of the proposed mitigation of creating backwater/marsh habitat, thus benefiting this species.

Elf owl – Elf owls are associated with woodland habitats in the arid southwest, including saguaro, cottonwood-willow, and arboreal mesquite habitats (Rosenberg *et al.* 1991). As with other listed bird species inhabiting riparian forests along the lower Colorado River, protection, followed by enhancement of riparian habitat, is a management priority (SAIC 2001). This is the intent of the proposed mitigation measures.

Gila woodpecker – This species has fairly broad habitat uses with the common denominator of patches of woodland. For instance, they occupy mature riparian forests along the lower Colorado River, saguaros, mesquite bosques, and orchards (Rosenberg *et al.* 1991). Patch size is apparently an important component for riparian nesting, with a minimum patch size of at least 20 ha (49 ac) (Rosenberg *et al.* 1991). The preservation, restoration, and enhancement of riparian woodland as a proposed mitigation strategy would be beneficial to this species.

Gilded flicker – This species occupies woodland, saguaro, and mesquite habitats, but is strongly associated with saguaros for nesting, although riparian trees with nesting cavities may be used (Rosenberg *et al.* 1991, Steinhart 1990). Because of the preference for nesting in saguaros, there are probably few gilded flickers in the riparian habitat along the Colorado River below Parker Dam except, perhaps, in the non-breeding season. As such, any improvement in riparian habitats from the proposed mitigation measures will have a marginal effect on this species.

Gilded northern flicker – The gilded northern flicker occupies riparian and mesquite habitat along the Colorado River. No impact would occur to the mesquite habitat, and mitigation measures identified within the PEIR would mitigate for any impact to its riparian habitat.

Greater sandhill crane – While reproductive activities occur further north, this species winters in the lower Colorado River Valley and elsewhere. They roost in wetlands and shallow marshes, especially sites adjacent to fields cultivated for grain. The largest wintering area in the lower Colorado River Valley is Cibola National Wildlife Refuge. The Lower Colorado River Multi-Species Conservation Plan (MSCP) (SAIC 2001) identifies the shortage of suitable roosting sites adjacent to foraging areas as a major threat to the species. Creation and preservation of suitable marsh habitat under the proposed mitigation measures may enable the species to expand into new areas.

Southwestern willow flycatcher – This species is a riparian obligate requiring a dense canopy and understory, with a midstory of variable density (Sogge and Marshall 2000). Vegetation patch size may be an important correlate of productivity and must be larger than approximately 10 yards wide (Sogge and Marshall 2000). Nest sites usually include or are near open water, cienegas, marshes or saturated soil in normal to wet years, although there may be a total absence of water or saturated soil in dry years (Sferra *et al.* 1997, Sogge and Marshall 2000). Dense vegetation and surface water may be important in both buffering against extreme air temperatures and reducing cowbird nest parasitism. The proposed mitigation measures to preserve and restore riparian habitat along the lower Colorado River would mitigate offset impact to riparian habitat suitable for this species.

Swainson's hawk – This species occurs along the Colorado River in a variety of habitats, including marsh, riparian, mesquite, and upland habitats. Any impact to its foraging or nesting habitat would be mitigated by the measures provided in the PEIR.

Western yellow-billed cuckoo – This species requires broad habitat patches of mature cottonwoods with a subcanopy layer of willows (Rosenberg *et al.* 1991). Optimal stand size is >198 acres and at least 1,900 feet wide (Laymon and Halterman 1989 in SAIC 2001). The proposed mitigation measures to preserve and restore riparian habitat, would benefit this species.

Willow flycatcher – The willow flycatcher occupies essentially the same habitat as the southwestern willow flycatcher. Therefore, the mitigation measures provided in the PEIR also apply to this species.

Yuma clapper rail – Suitable habitat factors include uneven-aged stands of cattails and bulrushes, interspersed with open water of variable depths (Conway *et al.* 1993). As a relatively opportunistic species (Rosenberg *et al.* 1991), creation of suitable marsh habitat under the proposed mitigation measures may enable the species to occupy new sites.

8. The PEIR addresses the habitat for these species in section 3.2.1.6. Additional clarification has been provided below in response to this comment, but the conclusions of the analysis regarding the impacts to wildlife species have not been changed. Also refer to response no. 7.

Brown-crested flycatcher – Occurs in riverine areas containing willow and other riparian species. Implementation of the mitigation measures will compensate for any alteration of the habitat for the species.

Coopers hawk – Forages and nests throughout the lower Colorado River area. Implementation of the Proposed Project would not directly impact the species. Potential impacts to riparian and marsh habitat may affect the species.

Crissal thrasher – Occurs in dense brush, including mesquite. The Proposed Project may affect this habitat, but mitigation proposed would mitigate this impact.

Fulvous whistling duck – Occurs in marsh areas along the lower Colorado River. Wetlands affected by the change in river elevation would be replaced under the proposed mitigation measures, mitigating potential impacts to this species.

Harris hawk – Forages throughout the lower Colorado River in riparian and upland habitats. Any impacts to the habitat of the species would be mitigated by the measures included in the PEIR.

Long-eared owl – Occurs in willow habitat along the lower Colorado River. Mitigation measures identified in the PEIR would mitigate for any changes in the owl's habitat.

Summer tanager – Occurs within dense willow riparian habitat. Mitigation measures identified in the PEIR would mitigate for any changes in the tanager's habitat.

Vermillion flycatcher – Occurs in dense willow riparian habitat. Mitigation measures identified in the PEIR would mitigate for any changes in the flycatcher's habitat.

Yellow warbler – Occurs in dense riparian habitat. Mitigation measures identified in the PEIR would mitigate for any change in habitat.

9. The analysis adequately investigates and discusses the potential significant impacts of the Proposed Project on the biological resources of the Colorado River (section 3.2.2.3) using a habitat-based approach. While the species listed by the commentor may not be specifically addressed in the PEIR, the analysis focused on the potential impacts to habitats used by these species. Implementation of the Proposed Project would not result in any direct physical impacts to species or habitats due to construction or alteration of any facilities, although short-term impacts could result from the implementation of mitigation/conservation measures, as noted in section 3.2.3 of the PEIR. Areas of potential impact were associated with the reduction of up to 388 KAFY of river flow between Parker and Imperial dams. Mitigation measures are identified in the PEIR that reduce any potentially significant impact to less than significant levels.
10. An analysis of potential effects on the Colorado River between Parker and Imperial dams was prepared by Reclamation in 1999-2000. This analysis was based on a cumulative assessment approach using a change in point of diversion volume of 1.574 million acre feet per year (MAFY) taken from the ongoing Lower Colorado River MSCP process, and scaled to attribute effects to the 400 thousand acre-feet per year (KAFY) proposed IID transfer and QSA actions¹.

¹ Although the IID Transfer and QSA volume of 400,000 acre-feet per year is well understood, the source of the 1.574 MAFY figure (a figure which implies significant precision for all possible future transfer volumes) is not defined in the BA, except as attributed to general estimates made by the three Lower Division States (Arizona, California, and Nevada) when queried regarding all possible actions that may reduce river flows that could be taken over the next 50 years (the list of actions is briefly described on page 39 of the BA, and actions are listed without quantification on pages 40 and 41). In contrast to the precision implied, the 1.574 MAFY value is a very conservative estimate and is not necessarily representative of reasonably expected projects or other conditions that would occur in the next 50 years.

Based upon these assumptions, the analyses determined that the river flow reductions would produce *median* water surface elevation reductions ranging from a *maximum* of up to 0.4 feet near Parker Dam, to less than one-quarter inch downstream at Imperial Dam, over a period of 10 years or more with equivalent groundwater changes in adjoining backwaters and sloughs. These levels of *monthly median* water surface elevation change are less than the variations that occur now in response to weather, and variable water releases to meet annually and seasonally variable irrigation water demands.

The assumptions used in the analysis of potential impacts to habitats thus was very conservative and represents a worst-case analysis. This is especially true when addressing the potential effects associated with the decline of groundwater on riparian habitat. The analysis of impacts assumed a one-to-one ratio of the decline in river level to groundwater level, which is very conservative since there would likely be less change in groundwater level. Additionally, the riparian area that was impacted was probably overestimated since each area examined was assumed to be suitable habitat, and it probably was not. Thus, the mitigation measures identified in the PEIR actually mitigate for the maximum potential impacts.

The identification of impact to microhabitats utilized by individual species is beyond the scale of impact assessment required by CEQA. Further, the model developed by the Bureau of Reclamation to identify the impacts to riparian habitats and obligate riparian species was not designed to be sufficiently sensitive to determine the extent and impact to individual riparian microhabitats. Therefore, it is not feasible to determine impacts to microhabitats. However, several microhabitats are specifically identified as contained within the riparian habitats identified in the model. The species of concern listed in the comment and threatened and endangered species are adaptable with regard to their habitat characteristics. They frequently occupy and utilize sites that are subject to conditions that vary remarkably within seasons and between years in the arid Southwest. These species also show a wide range of tolerance to the specific character of microhabitats occupied. Finally, the mitigation measures described are broad habitat types that will include establishment of varied microhabitats to serve the needs of each of the species identified.

11. The information addressing the proposed project's potential impacts to groundwater elevation and the resulting effects on biological resources is based on a habitat approach. The potentially affected habitats include all of the components and characteristic that enable the species to survive and complete all portions of their life-cycle that are associated with the project area. While specific microhabitat characteristics may be important to consider when developing specific restoration plans for specific species the broader habitat based approach is sufficient for program-level CEQA impact analysis. The current analysis provides a qualitative evaluation of species survival and therefore overall reproductive success but need not provide an evaluation of specific details on the impacts to specific nest sites. This approach is consistent with the approach and level-of detail provided in the current edition of the administrative draft Conservation Plan for the Lower Colorado River MSCP. The MSCP conservation strategy is based on a habitat-level approach not micro-site characteristics. The strategy developed in the PEIR is consistent with the MSCP approach.

12. This comment is noted.
13. It is uncertain whether this impact would occur (refer to response nos. 10-11). The analysis conservatively assumes that the impact could occur, however, and that if it did, the impact would be significant. Mitigation measures were identified to reduce the impact to a less than significant level. The designation of “potentially significant” was made because of the uncertainty of the impacts; however, the impacts were considered significant from a CEQA perspective and fully mitigated to a less than significant level.
14. In August of 1993, Governor Pete Wilson signed Executive Order W-59-93, creating the nation’s first statewide comprehensive wetlands program. The California Wetlands Conservation Policy (Policy) established a framework and strategy to:
 - ensure no overall net loss and achieve a long-term gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property;
 - reduce procedural complexity in the administration of state and federal wetlands conservation programs; and
 - encourage partnerships to make landowner incentive programs and cooperative planning efforts the primary focus of wetlands conservation and restoration.

The Policy calls for the implementation of 33 specific actions, ranging from performing wetland inventories, to developing mitigation banking policies, to creating regional wetlands restoration and enhancement efforts. Governor Wilson’s December 1998 State of the State Report on Wetlands found that, of the initial 33 actions to protect and conserve wetlands, 17 actions were implemented in full and 12 actions in part.

One of these actions was to conduct a statewide wetlands inventory to serve as a baseline from which to determine losses and gains to the state’s wetlands base. The Policy states that the inventory will not be used for regulatory purposes.

Another action called for by the Policy is to use the inventory information to identify regional and statewide goals for conserving, restoring, and enhancing wetlands. The achievement of these goals will emphasize maintenance of economic uses of restored and enhanced lands and will be done through the voluntary participation of landowners. The Policy stresses that these goals are not meant to be achieved on a permit-by-permit basis.

We have not found anything in the foregoing two actions or any of the other actions contained within the Policy that would require it to be recognized or addressed within an EIR. Potential project related impacts to riparian and wetland habitats are discussed in the PEIR (see section 3.2.2.3).

15. Any reduction in groundwater levels is anticipated to be small and would primarily occur near the edge of the River. As a matter of course, a restoration plan would consider groundwater levels and account for any localized groundwater conditions in designing the restoration effort.

16. Roots of riparian species certainly do not have unlimited growth potential. However, any potential changes in groundwater levels would be small and would not cause substantial impacts to riparian species beyond those described in the PEIR for which mitigation has been identified.
17. A review of historical data establishes that no entrainment of the razorback sucker and the bonytail chub has occurred at the intake facilities at Lake Havasu or Imperial Dam. Under the Proposed Project, there would be no changes in the quantity of water diverted by MWD at its intake facility at Lake Havasu, and there would be a reduction in diversions at the intake facility at Imperial Dam. Accordingly, the Proposed Project would have flow impacts to the Colorado River, but would not have environmental impacts at any intake facilities. Therefore, no take of the razorback sucker or the bonytail chub would occur at these facilities as a result of the Proposed Project. Fish screening, thus, will not be addressed in this PEIR, but separate and apart from the Proposed Project, we will coordinate with CDFG with respect to its fish screening policy and criteria.
18. A discussion of the changes in water quality associated with the Proposed Project is provided in section 3.1 of the PEIR; any changes were projected to be small and less than significant. Because the overall diversion of water from the Colorado River would be reduced and the diversions by MWD would not be increased over current or recent levels, there would be no impact associated with increase of entrainment rates of fish and other aquatic organisms.
19. Thank you for the information. Table 3.2-2 has been corrected.
20. Thank you for the information. Table 3.2-1 has been corrected.
21. Section 3.2.2 does discuss the impacts to species not carrying special designations and assesses the significance of these impacts relative to the significance thresholds provided in the document. See also response nos. 7, 8, and 9.
22. As noted in the PEIR (e.g., section 3.1.2.3), the Proposed Project would result in only a small decrease in river flow even if the full transfer of water were implemented. The median annual surface water elevation would decrease by a maximum 0.4 feet, which is within the historical hourly, daily, and weekly fluctuation of water levels for the area. (As noted in section 3.2.2.3, at Parker Dam the daily fluctuation is approximately 5 feet during the peak irrigation season in the summer and about 2.5 feet in the winter. The daily fluctuation is about 6 inches at Imperial Dam.) Recreational facilities such as launch ramps would not be significantly impacted by the changes in water surface elevation, nor would boating safety. As noted in section 3.2.2.3 of the PEIR, no adverse impacts to sport fisheries would occur; thus no significant impacts to recreational fishing would occur. Impacts to waterfowl hunting are not considered significant because only small areas would be affected, resulting in subtle habitat changes that would not significantly affect recreational opportunities.
23. The statements referenced in the comment are not in conflict; rather, they refer to impacts to two separate resources. The impact to sport fishing at the Salton Sea is considered a significant *recreational* impact due to the reduction in numbers of fish. The *biological*

impact to the Sea’s sport fishery is not considered significant since non-native fish would be affected. The PEIR reflects the mitigation strategies that were current at the time that the document was issued.

24. This comment is noted.
25. The BA and BO focused on mitigation for potential impacts on habitat types that can be identified with the species that could be affected by the proposed project. The anticipated changes in habitat due to reduction in river flow between Parker and Imperial dams were modeled conservatively (see response nos. 10-11). Once impacts on the habitats were determined, potential impacts to special status species were assessed. Mitigation measures were developed based on the potential impact to habitats. State-listed threatened and endangered species occupy similar habitats. The mitigation measures outlined in the PEIR were developed to reduce to a less than significant level the impacts that have been identified associated with implementation of the proposed project.
26. After the release of the Draft PEIR, IID continued to work with the U.S. Fish and Wildlife Service and the California Department of Fish and Game regarding refining Mitigation Strategy 1 to meet the concerns over this strategy. The resource agencies subsequently removed the strategy from consideration when the U.S. Fish and Wildlife Service and California Department of Fish and Game notified IID that incidental take permits would not be granted if this mitigation strategy were chosen. Section 3.2.3 has been modified to reflect that avoidance and minimization of impacts to biological resources at the Salton Sea would be accomplished by Mitigation Strategy 2.
27. Significant impacts to *sport fishing* were identified in the Recreational Resources section (section 3.6), but impacts to *sport fish* were considered less than significant in the Biological Resources section (section 3.2). The lead agencies believe that this is an appropriate finding in that the loss of the fishery itself would not reach a level of significance because the species are non-native; however, the loss would result in a significant impact to the recreational resources of the Salton Sea. This finding is consistent with the comments provided.
28. As explained in the response to California Department of Fish and Game comment 26 Mitigation Strategy 1 has been dropped from consideration and the implementation of Mitigation Strategy 2 is proposed exclusively.
29. The CDFG’s comment letter on the QSA PEIR states “The DEIR fails to include an adequate discussion of all projects warranting attention as required by CEQA Guidelines Section 15130(b)(1)(A) and (B).” The co-lead agencies disagree with this comment.

In defining the other related projects to be considered in the cumulative impact assessment, the focus is identifying probable current or future projects. Generally, a project may be included as a related project if it is (1) previously approved by a public agency but not yet implemented; (2) proceeding with the environmental review, approval, or permitting processing; (3) adopted as part of a regional planning or capital investment program or subsequent phases of an approved project; or (4) public agency projects for which money has been budgeted. Speculative future activities are not considered in the cumulative

impact assessment. The PEIR identified 29 related projects meeting this criteria that were considered in the cumulative impact analysis (see Chapter 4).

30. See response to comment no. 29. The commentor is incorrect in assuming that the 1.574 MAFY represents “projects” requiring cumulative impact analysis in the PEIR (which would result in the estimated cumulative change in the point of diversion between Parker and Imperial dams of no more than 500 million acre feet) do not adequately capture the cumulative changes that would occur, as required by CEQA. The 1.574 MAFY was used in the MSCP based on a series of worst-case assumptions regarding conceptual transfers and changes in points of diversion that would maintain full aqueducts for urban users and provide for possible federal program uses. This number is a working estimate subject to change and is being refined through the MSCP planning process. While the 1.574 MAFY is appropriate for long-term conservation planning purposes of the MSCP, some of the projects and assumptions used to develop this number represent highly speculative projects and assumptions that are not reasonably foreseeable from a CEQA prospective. The list approach used in Chapter 4 of the PEIR addresses all of the reasonably foreseeable projects on the Colorado River and provides an adequate analysis under CEQA.
31. The commenter cites the 2000 Biological Assessment and 2001 Biological Opinion as authority for justifying a cumulative impact analysis for 1.574 MAFY. The Biological Assessment and relied on the impact modeling by Reclamation for the Lower Colorado River MSCP process, and except as indicated in the PEIR, the number does not represent projects that should be included in a cumulative impacts analysis, as such projects are described in CEQA Guideline 15130.

The Bureau of Reclamation statement cited in the comment was directed at the fact that a 25 KAFY change in the point of diversion, or some other relatively small number, may not result in a habitat change, although modeling of 1.574 MAFY would show a habitat change. The Service’s point was that an incremental change in habitat would occur due to changes in the point of diversion even if it were not detected by the model. The PEIR concurs with the comment; thus, significant impacts to biological resources along the lower Colorado River were identified, and mitigation measures were established to reduce those impacts to a less than significant level.

32. Please refer to response no. 30 above.
33. It is not appropriate to identify the 1988 Agreement as a project to be included in the cumulative impact analysis. The CDFG’s letter also indicates that the IID/Metropolitan 1988 Agreement should be included in the cumulative impact analysis of the PEIR as a related project.

This program has been implemented for over 10 years. The potential effects of this program to resources along the Colorado River have occurred over the period of its implementation. Any effects would be reflected in the existing environmental conditions. As discussed above, the cumulative effects of this program have been factored into the cumulative impact analysis for the QSA PEIR through consideration of the existing environmental setting against which the impacts of the Proposed Project and other related projects were assessed.

To identify the IID/MWD 1988 Agreement as a separate related project for cumulative impact analysis would lead to a “double counting” of any related effects – once as reflected in the baseline and as a cumulative project.

34. Please refer to response nos. 10-11, and response no. 30 above.
35. It is not necessary to include an additional analysis of the cumulative effects of the 1988 Agreement. The baseline conditions included the overall trend of increased salinity, which also included any “effect” from the 1988 Agreement.
36. Additional detail regarding the Mexicali Wastewater System Improvements is provided in section 4.2.15. According to U.S. Environmental Protection Agency (EPA) and the International Boundary Water Commission (IBWC), after the system improvements are complete, the treated water would be discharged into the New River. At the time of publication of the Draft PEIR, neither EPA nor IBWC was aware of any plans to redirect the treated water for use in Mexico (McNaughton 2002, Torrez 2002, Pena 2002). Similarly, the environmental documentation for the wastewater system improvements states that all wastewater collected for treatment will be discharged to the New River (EPA and IBWC 1997). Therefore, the Draft PEIR incorrectly stated that 55 KAFY could be redirected for use in Mexico. This discussion has been revised. The improvements would result in a beneficial impact on the water quality of the New River and thus the water quality of inflows to the Salton Sea.
37. It is correct that the salt levels in the drainage water would increase somewhat. However, there would be a greater flow of water, which would increase dilution of the Sea since the inflow salinity concentration would be much lower than that of the Sea.
38. Under CEQA, EIRs must provide enough detail about an alternative to allow an adequate evaluation, analysis, and comparison with the proposed project. CEQA Guidelines (Section 15126.6[d]) state, however, that the discussion of environmental effects of the alternatives can be less detailed than that of the impacts of the Proposed Project. The analysis in the PEIR is provides sufficient detail to permit a meaningful evaluation of the alternatives and complies with CEQA requirements.
39. Thank you for the additional information. The discussion of Alternative 2a has been modified to reflect this information.
40. Thank you for your input. No additional response is required because this comment is consistent with the conclusions of the PEIR.
41. The PEIR does analyze reasonably foreseeable direct and indirect impacts within the regions of influence listed in the comment, including the potential for growth inducing impacts. Growth-inducing impacts are addressed in Chapter 6. Other direct and indirect impacts are discussed under individual resources in Chapter 3. The EIR concludes that maintaining current deliveries of Colorado River water is not growth-inducing, for the reasons discussed in response to CDFG comment 42.

42. Under the State CEQA Guidelines (Section 15126[20][d]), a project may have a growth-inducing effect if it would foster economic or population growth or the construction of new housing, remove obstacles to population growth (such as major expansion of a water treatment plant), require the construction of additional community service facilities that could cause significant environmental effects, or encourage and facilitate other activities that could cause significant environmental effects.

Section 6 of the PEIR analyzes in detail whether the QSA would meet any of these criteria. The analysis concludes that none of the criteria would be met, and therefore that the QSA is not considered growth inducing. As summarized in section ES-7 of the PEIR:

The QSA does not directly or indirectly provide new water supplies to Southern California. Instead, the QSA changes the distribution of existing Colorado River water supplies among the co-lead agencies, thereby assisting California in reducing its use of Colorado River [water] from an average of 5.0 MAFY to 4.4 MAFY in normal years... QSA implementation will merely assure that delivery of Colorado River Water to the MWD/SDCWA service areas will be identical, at best, to the historical averages for the last 15 years or more.

The comments suggest that the QSA would be growth-inducing because it would increase the reliability of water supplies to the SDCWA and MWD service areas. However, as explained in Chapter 6 of the PEIR, the QSA would *maintain*, not increase, the reliability of current Colorado River water supplies as one component of meeting current and projected water demand in the MWD and SDCWA service areas.

It is important to recognize that under the QSA, total Colorado River water deliveries to California agencies will be reduced from an average of 5.0 MAFY to 4.4 MAFY in normal years. The QSA maintains the reliability of MWD and SDCWA Colorado River water supplies that these agencies have experienced in the past.

Within the MWD service area, as explained in section 6.2.3 of the PEIR, the Proposed Project would allow MWD to *maintain* its water supplies as the amount of water available to California is reduced. The QSA is not growth-inducing within the MWD service area because no new water deliveries are proposed, no increase in the amount of water carried by the Colorado River Aqueduct is proposed, and no expansion of aqueduct capacity is proposed. Without the QSA, MWD would need to implement other methods to meet service area water demands, as described in section 6.2.3.2 of the PEIR. A recent analysis (Report on Metropolitan’s Water Supplies, MWD, February 11, 2002) demonstrated that MWD has sufficient resource reserves to meet projected demands as a “margin of safety,” in case water programs such as the QSA are slowed in implementation.

Within the SDCWA service area, as explained in section 6.2.4.2 of the PEIR, the QSA and IID/SDCWA water transfer would not cause SDCWA to receive any more water than it received prior to the transfer, but would *maintain* reliability of past deliveries to SDCWA. Under the QSA, SDCWA would continue to receive the same quantity of water, at the same point of diversion, and through the same facilities as it does presently. The only

difference would be that the water delivered to SDCWA would be water of a more senior priority, helping to ensure the future reliability of that water supply during drought years.

Without the QSA, SDCWA would rely on continued delivery of imported water from MWD, water transfers, recycling, and seawater desalination, and would pursue the IID/SDCWA transfer as a separate project. Based on population forecasts prepared by the San Diego Council of Governments (SANDAG), SDCWA has projected that in 2002 there would be an average total water requirement for its service area of 813,000 acre-feet per year (AFY). To meet that need, SDCWA has projected that local supplies would provide only 223,500 AFY, with the remaining 589,500 AFY consisting of imported water. Measured against over 650,000 AFY that SDCWA has purchased from MWD in the past, and the fact that SDCWA imported water purchases currently exceed 600,000 AFY (the estimate for FY 2002 is 635,000 acre-feet), this clearly indicates that the primary source of water to meet increasing demands is not imported water, but local water.

Also, comment 42 states the QSA objective as “enhancing” certainty and reliability. As stated in section 2.2 of the PEIR, one QSA objective is to “ensure the certainty and/or reliability of Colorado River water supplies”; this objective is achieved through *maintaining* the historic reliability of Colorado River water supplies. Another objective is to “assist [the co-lead] agencies in meeting their water demands without exceeding California’s apportionment of Colorado River water”; such assistance would be provided not through creating a new water supply, but rather through redistribution of reduced Colorado River water supplies.

Because the QSA water transfers have been described elsewhere as “enhancing” or “increasing” water supply reliability, it is helpful to explain such statements in the context of the PEIR statement that the transfers “maintain” historic reliability of current water supplies. Until now, the reliability and availability of the Colorado River supply for MWD and its member agencies, including SDCWA, have been constant, even when imported water from the State Water Project and local supplies has been curtailed. For many years, MWD’s Colorado River Aqueduct has operated at or near full capacity, and the SDCWA supply from MWD has been largely Colorado River water (from FY 1991 through 2000, 84 percent of MWD deliveries to SDCWA consisted of Colorado River water). Although about 700,000 AFY of water required to fill the aqueduct is not within California’s normal year apportionment of 4.4 million acre-feet, that water was available until 1996 due to the availability of the unused apportionments of Arizona and Nevada. As those states are now at or near full use of their apportionments, surplus declarations have filled the Colorado River Aqueduct since 1997. The QSA components are designed to help keep the aqueduct full into the foreseeable future. This will allow MWD and SDCWA to continue to rely on Colorado River water to the extent they have relied on it in the past and rely on it today. Therefore, in the context of historic and present availability of Colorado River water, the purpose of the QSA is to maintain the availability and reliability of that supply. If the QSA or other actions providing sources of water to ensure a full aqueduct in the future were not implemented, the ability to fill the aqueduct would be dependent on the availability of surplus water as determined on a year-to-year basis. MWD has proposed a number of actions, including water transfers and storage projects, that would help fill the aqueduct, but it is uncertain at this point, absent the QSA, which of

those projects would be implemented. In the context of a future in which without the QSA a full Colorado River Aqueduct is uncertain, the QSA actions would increase or enhance the reliability of future Colorado River supplies, particularly in drought years when the river system supplies less water.

Additional discussion regarding the potential for growth inducement in the SDCWA service area is included in Attachment 1.

43. The CDFG will serve as a trustee agency and, potentially, as a responsible agency for the Proposed Project.
44. If appropriate, a Property Analysis Record (PAR) will be prepared.
45. This comment is noted.
46. This comment is noted.
47. California Endangered Species Act (CESA) Section 2081 was amended by SB 879 (Johnston) to state:

The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impacts of the taking on the species [emphasis added]. Where various measures are available to meet this obligation, the measures required shall meet the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking (Fish and Game Code Section 2081.(b).(2.)).

The above italicized language indicates that . the “full mitigation” requirement is one that is proportional to the impacts of the take, i.e., mitigation that is sufficient to offset the take. A legislative declaration added to CESA by SB 879 .confirms this. In that regard, Section 2052.1 provides:

The Legislature further finds and declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a [listed] species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. Where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objective to the greatest extent possible consistent with this section. All required measures or alternatives shall be capable of successful implementation. This section governs the full extent of mitigation measures or alternatives that may be imposed on a person pursuant to this chapter. This section shall not affect the state's obligations set forth in Section 2052 (emphasis added).

While Section 2052.1, which governs the extent of mitigation that may be required under CESA, echoes the rough proportionality standard set forth in Section 2081(b), it does not include the term “fully mitigate.” Accordingly, that phrase should not have any independent significance and should not be interpreted to require more mitigation than is allowed under Section 2052.1.

The federal ESA definition of “take” is broader than CESA’s definition in several important respects. First, the federal ESA definition is “[t]he term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The CESA definition of “take” is much narrower and does not include “harass,” “harm,” or “wound.” Rather, under Fish and Game Code Section 86 “[t]ake means hunt, pursue, catch, capture, or kill, or to attempt to hunt, catch, capture, or kill.” Under federal regulations and federal case law, the federal inclusion of “harm” within the ESA definition of take implicates impacts on a listed species habitat. While there may be very limited circumstances in which habitat modification might result in “take” under CESA, those circumstances are much narrower than under the federal definition of “take.”

AB 21 (Olberg) added Section 2080.1 to CESA in the same year that SB 879 amended CESA. Section 2080.1 provides that if a person has been issued an incidental take permit under Section 10(a) or an incidental take statement under Section 7 of the federal ESA for a species that also is listed under CESA, no further authorization or approval is required under CESA unless the director of DFG, based upon substantial evidence, determines that federal incidental take permit or statement is inconsistent with CESA. It also is noteworthy that Section 2080.1 contains a “sunset” provision if the federal ESA is amended to alter the requirements for issuing an incidental take permit or statement. Accordingly, Section 2081.1 also makes it clear that the incidental take mitigation required under CESA is no greater than required under the federal ESA. Since the enactment of Section 2080.1 DFG has applied Section 2080.1 many times, resulting in no mitigation being required under CESA beyond what issuance of the federal permit or statement was conditioned on.

48. A Streambed Alteration Agreement will be applied for if required.

ATTACHMENT 1: SDCWA GROWTH INDUCEMENT ANALYSIS

INTRODUCTION

SDCWA is a regional resource agency mandated by state law to provide water necessary to meet demands of its public agency customers. SDCWA does not regulate land use in San Diego County; it is powerless to do so. SDCWA currently receives virtually all of its imported water supply from MWD. MWD supplies water through a variety of sources, including Colorado River water ("CRW"). Historically, the water delivered by MWD to SDCWA has been CRW; even after construction of the State Water Project, over three-quarters of MWD supplies delivered to SDCWA have come from CRW. Of the total amount imported from MWD, only 303 KAFY is considered firm supply, according to the SDCWA 2000 Urban Water Management Plan². The remainder of the water currently supplied is comprised of water that cannot be relied upon on a year in-year out basis over the long term. The proposed project would give SDCWA a firm supply of 200 KAFY to service existing demands by providing SDCWA with a senior priority entitlement to Colorado River water instead of the less reliable MWD water it currently receives. Because of capacity limitations to MWD's Colorado River Aqueduct, which currently runs at or near full capacity, the project would not increase the amount of water into MWD's service territory.

MWD currently receives approximately 1.2 million acre-feet per year (MAFY) of CRW through a 4th and 5th priority entitlement. MWD's 5th priority supply is dependent on yearly surplus declarations made by the Secretary of the Interior. These surplus declarations have enabled SDCWA to receive a larger amount of CRW than would be possible through normal-year supply. Due to circumstances discussed elsewhere in the EIR, MWD and SDCWA can no longer reasonably rely on these surplus declarations for future years.

In Fiscal Years 2000 and 2001, SDCWA required approximately 600 KAFY of imported MWD water to service its existing customers. In FY 2002, this number is projected to be 635 KAFY. SDWCA's highest imported water requirement was approximately 672 KAFY to service its customers during drought conditions (July 1989-July 1990). Even with the project, SDCWA will not be able to meet all of its existing demands with firm water; however, the project does provide greater assurances against the potential for devastating economic, social and environmental hardship in the event of drought or other extraordinary circumstances.

Existing SDCWA aqueducts are sufficient to permit SDCWA to meet imported water requirements through approximately 2015, assuming imported water supplies (both firm and non-firm) are within the range of maximum historic imported water usage and assuming existing treated water constraints are mitigated by increasing local treatment capacity and

² See Appendix I, SDCWA 2000 Urban Water Management Plan. SDCWA's current preferential right as determined by MWD is 15.03% of MWD supplies. This equates to approximately 320,000 acre-feet of water using the same base as in the 2000 UWMP, i.e., MWD representations that it has 2.1 maf of dry year supply. For purposes of this discussion, the 2000 UWMP amount of 303,000 is used.

decreasing potable water demand through conservation.³ The proposed project has no effect on this projection.

In order to meet regional water needs, SDCWA must plan for future water supplies today. State law mandates that SDCWA plan its water supply based on regional growth management plans prepared by the San Diego Association of Governments (SANDAG).⁴ In 1992, SANDAG and SDCWA entered into a Memorandum of Agreement requiring SDCWA to use SANDAG's most recent regional growth forecasts in determining water demands and the amount, type and phasing of facilities needed to serve the forecast population.⁵ Since then, SDCWA has planned its future water supply based on SANDAG's regional growth forecasts.

As a resource agency having no land use authority of its own, SDCWA simply meets the demands of its public agency customers, some of which are cities that have constitutional and statutory authority to regulate the pace, location, and quantity of land development and some of which are water districts serving cities or unincorporated areas of the county. Any water supply that SDCWA brings into its service area is subject to apportionment by each member agency and is distributed at the discretion of the member agency. Except in unique circumstances of a declared water shortage emergency, SDCWA has no control or authority over ultimate use of water by its member agencies; SDCWA simply delivers the water.

The proposed project will alleviate the shortage of firm water currently experienced by SDCWA. It will not provide an additional source of water or change the amount of imported water delivered to SDCWA; rather, the water delivered to SDCWA as a result of the project will be the same water as is currently delivered but with senior water rights. The proposed project will bring SDCWA closer to meeting existing municipal, domestic and agricultural water demands with firm water supplies, but it will not increase total water supply or even completely close the gap between water demands and firm water entitlement.

CEQA STANDARDS FOR GROWTH INDUCEMENT ANALYSIS

The California Environmental Quality Act (CEQA) requires examination of the potential for proposed actions to cause growth-inducing impacts.

CEQA Guidelines, Section 15126.2(d) states:

- (d) Growth-inducing impact of the Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects that would remove obstacles to population growth (a major expansion of a wastewater

³ See Appendix II, Outline of Supplemental Expert Testimony of Maureen Stapleton.

⁴ See Appendix III, Text of Proposition C -- November, 1988, Regional Planning and Growth Control Measure; see also, Appendix III, Water Code § 10915 as added by Stats. 1995, c. 881, Sec. 4 (SB 901); Gov't Code § 66473.7(k) as added by Stats. 2001, c. 642, Sec. 4 (SB 221); Water Code § 10915 as amended by Stats. 2001, c. 643, Sec. 8 (SB 610).

⁵ See Appendix IV, Memorandum of Agreement Between the San Diego County Water Authority and the San Diego Association of Governments Establishing Implementation of the Regional Growth Management Strategy's Section on Water (1992); Appendix V, SANDAG Regional Growth Management Strategy (1993) and Water section (updated January 2002); Appendix VI, SANDAG 2020 Regionwide Forecast (July 1998); Appendix VII, San Diego Association of Governments (SANDAG) and San Diego County Water Authority (CWA): Regional Growth and Water Demand Forecasting.

treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects that may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

DESCRIPTION OF PROJECT AS IT RELATES TO POSSIBLE GROWTH INDUCEMENT

The QSA includes the water transfer provided for in the IID/SDCWA Transfer Agreement modified to provide conservation and transfer by IID of up to 200,000 acre-feet per year (AFY) of CRW to SDCWA, and up to 100,000 AFY of CRW to CVWD and/or MWD. These water transfers are key elements in the satisfaction of California’s legal mandate to reduce its diversion of Colorado River water from its historic diversions of up to 5.2 MAFY to its normal-year allotment of 4.4 MAFY. Consistent with existing water allocations under the Law of the River, the California parties will reallocate water with senior priority rights from inland agricultural water users to the Southern California coastal plain, a transfer plan intended to maintain existing water supplies vital to urban populations. The “ramp up” to full potential deliveries would occur over a period of several years.

For SDCWA, the IID transfer will provide an independent, alternate, long-term replacement water supply that provides drought protection and increased reliability for municipal, domestic, and agricultural uses.⁶ Although MWD’s Colorado River supplies have been reliable in the past, in the absence of the project that supply could be cut in half during years in which the Secretary of the Interior does not declare a surplus condition on the river. Loss of Colorado River deliveries in the future would have an immediate and significant impact on existing water supply capabilities of both MWD and SDCWA.

The water transfers contemplated by the proposed project do not require or involve construction of any new water delivery facilities within either the MWD or SDCWA service areas. No new water pipelines or aqueducts are part of the actions under consideration. The water transferred from IID would be transported via the existing MWD Colorado River Aqueduct and other transmission facilities. No delivery systems are proposed that would provide water to currently undeveloped land. Furthermore, the actions involved do not dictate the location of any future developments, as is the case, for example, with the placement of a new highway or a extension of a new water supply facility.

The Proposed Project Maintains Historic Deliveries and Assures the Future Reliability of SDCWA’s Existing Water Supply, But Does Not Make Available New or Additional Water

The proposed transfers, along with other QSA elements, are necessary to maintain historic deliveries of Colorado River water to the urban coastal plain. If California is reduced to its normal-year allocation of 4.4 MAFY, the reduction will occur primarily in deliveries through

⁶ For a complete discussion of SDCWA’s water supplies and planning, see Appendix I and Appendix VII.

MWD's Colorado River Aqueduct (CRA), which is SDCWA's sole means of receiving water from the Colorado River. This is because of the junior priority of MWD's entitlement relative to agricultural users. For many years, the MWD and SDCWA have depended on and used virtually a full CRA (roughly 1.2 MAFY), and a reduction to normal-year CRW supply would today mean that 600,000 to 700,000 AFY of that water would be lost. This is water that meets SDCWA's existing needs and the loss of that supply would have significant immediate impacts. Without any preventive action such as the QSA and the proposed transfers, a reduction of CRW supplies to California is likely.

MWD derives its water supply from two imported water sources: the Colorado River and the State Water Project (SWP). During the last drought (1986 to 1992), when SWP supplies were curtailed, the CRA was full. Until 1996, MWD was able to fill the CRA over and above its normal-year entitlement with water apportioned to, but unused by, Arizona and Nevada. Since 1996, now that those states are at or near their normal-year apportionment, the CRA has been filled through yearly surplus declarations by the Secretary of the Interior. To the extent that the proposed water transfers allocate senior priority river water to the CRA, SDCWA and MWD will be less dependent on annual surplus declarations to fill the CRA.

From Fiscal Years 1991 through 2000, of all water delivered from MWD to SDCWA, 84% of that water was from the Colorado River. While MWD deliveries to SDCWA and the rest of its service area lessened during the mid and late 1990's primarily due to local wet weather, deliveries to SDCWA averaged about 600,000 AFY in Fiscal Years 2000 and 2001, and are projected to total about 635,000 AFY for FY 2002.

If the QSA is implemented, the maximum amount of water transferred from IID to SDCWA would be 200,000 AFY. That water would be transported through the CRA. Assuming, for example, that the water transfer was currently in place at the full amount of 200,000 AFY and a firm MWD supply of 303,000 acre feet, SDCWA would still need 122,000 of supplies to meet projected deliveries to SDCWA this year, or 169,00 acre feet to meet the peak July 1989 - July 1990 deliveries. These additional supplies would come from MWD or other sources in accordance with the UWMP.

In order to meet its existing demands, SDCWA must find a reliable, long-term supply of water to replace the water it currently receives from surplus declarations. Since the water transfers proposed in the project allocate senior priority CRW to SDCWA, SDCWA will be less dependent on annual surplus declarations to meet existing demand. The proposed project will help offset the diminished supplies of Colorado River water that could otherwise be available in the future and ensure that SDCWA will not suffer the loss of supplies that have been available to it in the past.

Potential Direct and Indirect Growth Inducing Impacts of Maintaining Historic Supplies and Ensuring Future Reliability of Existing Water Supply

Maintaining historic and existing CRW supplies and ensuring those supplies for the future does not create an increased water supply or make additional water supplies available to new or future development. The proposed project firms up the future reliability of service to existing users; it does not create new water for future users. Currently, not all SDCWA water supplies that serve existing demands can be categorized as firm supplies. In order to meet its current

demands, SDCWA must rely on yearly surplus declarations from the Secretary of the Interior and other extraordinary measures. The proposed transfer will convert a portion of the less reliable water currently used into a firm supply serviced by senior priority Colorado River water. The proposed transfer is a step by SDCWA towards meeting all current demands with firm water.

Since the QSA water transfers only provide more reliable water into the future for current demands in the San Diego region, future growth of the San Diego region will not be affected. All of the water secured by the proposed IID/SDCWA transfer is already committed to current demands; none will be available for future development. Under the SDCWA 2000 Plan, all deliveries are to be based on firm supply. Increasing the future reliability of dry year water deliveries that are already committed to existing users and needs has no direct or indirect impact on future growth, nor does it remove obstacles to population growth.

Land Use Decision-Making and Future Growth In San Diego County

The proposed project has no growth-inducing impact because it does not provide new water for new development, but only maintains historic delivery quantities and assures the future reliability of that water for existing customer demands. The following information is provided to inform the decisionmaker how SDCWA determines the level of service required to meet existing and future needs within its service area and supports the conclusion that the project merely assures future reliability of supply quantity necessary to serve current users.

Role of SANDAG in Land Use Planning

In San Diego County, SANDAG plays a key role in assisting local governments meet their responsibilities to plan and regulate land use. SANDAG is the regional planning agency for the 18 incorporated cities and county government. SANDAG is governed by a Board of Directors composed of elected officials from each of the 19 local governments. Supplementing the voting members are seven advisory members, including the SDCWA. SANDAG is mandated as the regional transportation planning agency, the regional transportation commission, and the regional growth management and review board. SANDAG provides a variety of services, including regional transportation planning, regional growth management,⁷ demographic and economic analysis, land use and growth management strategies, public facilities location, housing needs analysis and environmental planning.

SANDAG's Regional Growth Forecast

One of the most important land use tools provided by SANDAG is its regional growth forecast (RGF). Local agencies throughout the San Diego region use the RGF to assist with long-range land use decisionmaking. SDCWA also relies upon the RGF to assist with its water planning needs and capital programming processes.

SANDAG's preparation of the RGF is a two-step process. First, SANDAG creates a regional forecast for the total growth in the San Diego region through the use of economic and

⁷ See Appendix V.

demographic factors. Second, SANDAG allocates the growth identified in the regional forecast to the 18 cities and county. For the City and County of San Diego the allocations are also made for each community plan area.

The most recent iteration of the SANDAG forecast, the 2020 RGF, was approved for use by the SANDAG Board of Directors in February 1999 and its numbers were certified for use in all regional plans and studies, including those conducted by SDCWA. The 2020 RGF predicts that local population, employment, and income will grow steadily throughout the next 20 years. The region should see an average annual population increase of 46,400 through 2020. Total population is projected to reach 3.85 million by 2020, roughly one million more than in 1998. Most of the projected growth in population – about 60 percent – will be the result of natural increase (more births than deaths, not due to migration to the area).

SANDAG’s Regional Housing Needs Assessment (RHNA) and Housing Elements

SANDAG is the state's designated agency to provide regional housing needs assessment (RHNA) for the San Diego region.⁸ In that capacity, SANDAG identifies the total number of residential units (by income categories) that a jurisdiction must provide for the next five years as part of their housing element updates. An important ingredient of any local agency’s housing element is identifying an adequate number of housing sites to meet the local agency’s allocated share of the regional housing needs. SANDAG's RHNA plays a critical role in this determination.

All cities in the county and the County of San Diego have approved general plans. Each of these general plans was prepared and adopted in conformance with CEQA. Fifteen of the cities and the county have revised their housing elements to reflect SANDAG's most recent regional growth forecast and the remaining three cities are currently in the process of doing so. The county is also in the process of a comprehensive general plan update and is using SANDAG's regional growth projections in that process as well.

County Water Authority Act

SDCWA provides water to meet current and projected needs identified by SANDAG, and advises local governments regarding water supply issues. SDCWA is mandated by its principal act, the County Water Authority Act (Stats. 1943, c. 545) (CWA Act) to provide water to meet the needs of member agencies in its service area. The CWA Act, at Section 5(11), provides that a county water authority board of directors “as far as practicable, shall provide each of its member agencies with adequate supplies of water to meet their expanding and increasing needs.” SDCWA is not a retail water supplier; it is a wholesale water supplier to its member agencies, which are themselves retail suppliers and/or provide water to retail suppliers.

SDCWA’s statutory purpose and direction is to provide a safe, reliable water supply for its service area, both present and future. SDCWA is a water provider, not a land use regulator. SDCWA has no jurisdiction over local land use policy or decision-making, which lie with the cities and county government. As a wholesaler, SDCWA has no ability to direct the allocation

⁸ See California Gov. Code § 65585.1.(a).

of water by its member agencies so long as water use is within the uses prescribed in the Clean Water Act.

SDCWA/SANDAG Memorandum of Agreement

In order to meet its purpose and direction under the CWA Act, SDCWA has been working together with SANDAG for the past 12 years to link future water supply needs with forecasted regional growth. In 1992, SANDAG and SDCWA entered into a Memorandum of Agreement (MOA), which details how the two regional agencies coordinate to ensure the availability of water for future growth. Under the MOA, SDCWA agrees to use SANDAG's most recent regional growth forecasts for regional water supply planning purposes, provide updated information on changes in plans or programs, and implement relevant actions contained in the Water Element of the Regional Growth Management Strategy. The MOA ensures that water demand projections for the San Diego region are linked with SANDAG's growth forecasts and that water supply is a component of the overall Regional Growth Management Strategy.

The Legislature has recognized the unique regulatory and planning structure in San Diego County and has made SDCWA's adherence to the MOA one of the criteria for SDCWA's alternative compliance with its statutorily mandated water supply planning under Section 10915 of the Water Code. SANDAG revises its RGF once every 5 years. Thus, both water availability and housing development are driven by the same set of growth forecasts and are both periodically reassessed at the same time as part of the growth forecast update process for each forecast. The RGF is also used by the local agencies as part of their long-range planning and capital facilities programming.

The relationship established between SANDAG and SDCWA implements the requirements of SB 901, passed in 1995, which requires planning agencies to consider information provided by water agencies in their decisions to approve or deny commercial, industrial, or residential development. The state has determined that Proposition C, adopted by San Diego County voters in 1988, is functionally equivalent to the requirements of SB 901. Under Proposition C, SANDAG was charged with developing a Regional Growth Management Study and was designated by the cities and County government as the Regional Planning and Growth Management Review Board.

Two recent state legislative enactments also play a role in defining the nexus between land use and water supply, and further define water agencies' advisory role in the formulation of land use decisions by city and county governments. SB 221 amended various sections of the California Business and Professions Code and the Government Code to help ensure new housing developments have adequate water supplies. SB 221 prohibits approval of a tentative map, parcel map or subdivision development agreement unless the legislative body of a city or county provides written verification from the applicable public water system that a sufficient water supply is available, or in addition, a finding is made that sufficient water supplies are, or will be, available prior to completion of the project. SB 610 requires (in part) that an urban water management plan include a description of all water supply projects and programs that may be undertaken to meet total projected water uses, and prohibits an urban water supplier that fails to prepare a plan from receiving funding from bond acts until the plan is submitted.

SDCWA's 2000 Urban Management Plan

SDCWA's 2000 Urban Water Management Plan identifies the future water demands for its service area through 2020 based on the RGF developed by SANDAG. A key objective of the 2000 Plan is to provide a firm supply of water to meet the identified demand. The 2000 Plan identifies a need for 813,000 AF of water for its service area in the year 2020. This amount is not the identified imported water need; rather, it is the total need to be derived from both local and imported sources, when considered with extensive conservation that will continue to be implemented over the next two decades.

CONCLUSION

As discussed earlier, the project does not provide new water or new water facilities, but rather maintains historic delivery quantities and assures the future reliability of that water to meet existing customer demands using existing facilities. The above discussion is intended to inform the decision-maker as to the land use planning and growth forecasting used within SDCWA's service area. While the proposed project only supplies existing demands, and therefore, cannot encourage or induce growth or remove barriers to future growth, it is helpful to understand the process by which local agencies within the San Diego region plan for and accommodate growth.

References/Persons and Agencies Contacted

- Asplund, K.K. and M.T. Gooch. 1988. "Geomorphology and distributional ecology of Fremont cottonwood (*Populus fremontii*) in a desert riparian canyon." *Desert Plants* 9(1):17-27.
- Conway, C.J., W.R. Eddleman, S.H. Anderson, and L.R. Hanebury. 1993. "Seasonal changes in Yuma clapper rail vocalization rate and habitat use." *Journal of Wildlife Management* 57(2):282-290.
- Flores, R.E. and W.R. Eddleman. 1991. *Ecology of the California black rail in southwestern Arizona: final report*. Submitted to U.S. Bureau of Reclamation, Yuma Projects Office, and the Arizona Department of Game and Fish. Interagency Agreement No. 7-AA-30-05910. 68 pp.
- Hendrickson, D.A. and W. L. Minckley. 1984. "Cienegas – vanishing climax communities of the American southwest." *Desert Plants* 6(3):131-175.
- Jackson, J.J., J.T. Ball, and M.R. Rose. 1990. *Assessment of the salinity threshold of eight Sonoran Desert riparian trees and shrubs*. Desert Research Institute, University of Nevada, Reno.
- Laymon, S.A. and M. Halterman. 1989. *A proposed habitat management plan for yellow-billed cuckoos in California*. USDA Forest Service General Technical Report PSW-110.
- McNaughton, Eugenia. EPA. Personal Communication with Diana Sokolove, CH2M HILL. April 19, 2002.
- Minckley, W.L. and T.O. Clark. 1984. "Formation and destruction of a Gila River mesquite bosque community." *Desert Plants* 6(1):23-30.

- Marsh, P.C., J.E. Brooks, J.E. Johnson, and B.L. Jensen. 1991. "Management towards recovery of the razorback sucker." Pages 303-357 in W.L. Minckley and J.E. Deacon, eds., *Battle Against Extinction: Native Fish Management in the American West*. University of AZ Press, Tucson.
- Pena, Carlos. IBWC. Personal Communication with Diana Sokolove, CH2M HILL. April 19, 2002.
- Rosenberg, K.V., R.D. Ohmart, W.C. Hunter, and B.W. Anderson. 1991. *Birds of the Lower Colorado River Valley*. University of Arizona Press, Tucson.
- SAIC. 2001. *Lower Colorado River Multi-Species Conservation Program (MSCP), Revised species status reports for covered species*.
- Segelquist, C.A., M.L. Scott, and G. Auble. 1993. "Establishment of *Populus deltoides* under simulated groundwater declines." *American Midland Naturalist*. 130:274-285.
- Sferra, S.J., T. E. Corman, C.E. Paradzick, J.W. Rourke, J.A. Spencer, and M.W. Sumner. 1997. *Arizona Partners in Flight southwestern willow flycatcher survey: 1993-1996 summary report*. Arizona Game and Fish Department, Phoenix. Nongame Technical Report 113.
- Sogge, M.K. and R.M. Marshall. 2000. "A survey of current breeding habitats." Chapter 5 in D.M. Finch and S.H. Stoleson, eds., *Status, Ecology, and Conservation of the Southwestern Willow Flycatcher*. USDA Forest Service, Rocky Mountain Research Station. General Technical Report RMS-GTR-60.
- Steinhart, P. 1990. *California's wild heritage, threatened and endangered animals in the Golden State*. California Department of Fish and Game.
- Torrez, Thomas. EPA Border Office in San Diego. Personal Communication with Diana Sokolove, CH2M HILL. April 19, 2002.
- U.S. Bureau of Reclamation. 2000. Final Biological Assessment for the proposed Interim Surplus Criteria, Secretarial Implementation Agreements for the California Water Plan Components and Conservation Measures on the Lower Colorado River (Lake Mead to the Southerly International Boundary).
- U.S. Environmental Protection Agency (EPA) and International Boundary and Water Commission (IBWC). 1997. *Final Environmental Assessment: Mexicali Wastewater Collection and Treatment Project*. Prepared by CH2M HILL. November 11, 1997.
- U.S. Fish and Wildlife Service. 2001. Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary Arizona, California and Nevada.

State of California

Memorandum

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MAR 29 2002

To: Ms. Terry Roberts, Senior Planner
State Clearinghouse
Governor's Office of Planning and Research

SAIC SANTA BARBARA
March 26, 2002

Place: Sacramento

Mr. Robert D. Thompson
QSA PEIR
Sciences Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

Phone: (916) 657-4956

From: Department of Food and Agriculture - Steve Shaffer, Director
Ag & Environmental Policy



Subject: Draft Program Environmental Impact Report (Draft PEIR) for Implementation of
the Colorado River Quantification Settlement Agreement - SCH #2000061034

The California Department of Food and Agriculture (Department) has reviewed the Draft PEIR for Implementation of the Colorado River Quantification Settlement Agreement. The Department's mission is the protection and promotion of agriculture in California. Towards that end, we recommend that, for a complete final PEIR, the following information and issues pertaining to agricultural land and water resources be addressed in the document. In particular, we request that the final PEIR include a discussion of mitigation measures that will lessen, offset or avoid project impacts on agricultural resources.

Project Description

- Land fallowing can be a normal component of the sustainable management of agricultural land. Fallowing can be part of a crop rotation in order to rest the land, rebuild soil tilth and fertility, and replenish soil moisture. The final PEIR should compare the fallowing proposed as part of this project with the fallowing that might be incorporated into a sound agronomic stewardship plan for the agriculture uses typical of this area. | 1

Cumulative Impacts

- The Draft PEIR does a thorough job of addressing agricultural land depletion within the districts involved. The PEIR should also compare this with the regional and statewide trend in the loss of producing agricultural land. | 2
- The final PEIR should document how this project, if approved, would contribute to the cumulative agricultural land resource impact both regionally and statewide. If particular high value crops unique to the project setting will be impacted, how will the loss of the land that produces them affect their continued production in California? | 3

Ms. Terry Roberts
Mr. Robert D. Thompson
March 26, 2002
Page Two

Growth-Inducing Impacts

- Will the project result in increased water availability over what would otherwise be available to support urban growth? If so, will the removal of the water availability barrier to growth likely result in the loss of agricultural land? | 4

- Will fallowing of high value agricultural land result in a weakening of the protection afforded these lands by local general plan policies, and hasten their conversion to non-agricultural uses? Many cities and counties now rely on the state Department of Conservation's Important Farmland Mapping and Monitoring Program maps for land use decisions, often discouraging or restricting the urban development of Prime Farmland, Farmland of Statewide Importance and Unique Farmland in their general plans. Because this mapping program requires that land be irrigated at least once every four years in order to be mapped as Prime or Statewide Farmland, retirement or fallowing of agricultural land could cause affected lands to be moved into lower classes of mapped farmland. Such a "downgrading" could result in the removal of the fallowed agricultural land from the protection that may be afforded them by local general plan land conservation policies. Therefore, the final PEIR should describe how the project will alter the irrigation status of affected lands, and what effects a change in irrigation status could have on farmland classifications and land protection under local zoning and other planning restrictions. | 5

Indirect Environmental Impacts

- The Draft PEIR fails to address the indirect effect the environmental impacts have on the sustainability of local agricultural land uses. The final document should describe how the proposed reduction in productive agricultural land would affect the critical mass of agricultural acreage necessary to support local agricultural infrastructure. (e.g., crop shipping and processing, fertilizer and irrigation suppliers, etc.). Describe how the loss of critical support industries could adversely affect the profitability and use of the remaining agricultural lands in the surrounding area. | 6
- While it may be difficult to quantify these impacts, a qualitative discussion on them should be included in the final PEIR, based in part on conversations with local agricultural commissioners, and Cooperative Extension Service farm advisors and agricultural economists.

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Mr. Robert D. Thompson
March 26, 2002
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Mitigation Measures

- The Draft PEIR proposes to partially mitigate the potential impact of Imperial Irrigation District's long-term fallowing by establishing a policy by requiring that the project attempt to utilize short-term fallowing measures first. We recommend that the final PEIR expand this mitigation measure by setting a maximum duration to fallow land. Such a mitigation measure would eliminate the risk that land would lose its Prime or Statewide Importance classifications (see first paragraph, this page). 7

- The Draft PEIR mitigates the impacts of groundwater recharge facilities on agricultural land by trying to avoid facility placement on agricultural land altogether. This impact could be further mitigated by: 8
 - Guaranteeing groundwater (from the recharge) to surrounding agricultural land to counteract the impact of fallowing land for the facility.
 - Locating facilities on the least desirable farmland, in the event that use of farmland for the facilities is inevitable.

Thank you for the opportunity to review and comment on the Draft PEIR for the Implementation of the Colorado River Quantification Settlement Agreement. If you have questions on our comments, or require information or assistance in responding to them, please call me at (916) 657-4956.

cc: Bruce D. Ellis
U.S. Department of Interior
Bureau of Reclamation

California Department of Food and Agriculture, March 26, 2002

1. Fallowing is a possible option for conserving water; it is not the only means available, however. As described in section 2.5.1 of the PEIR, other methods of conserving water in the IID service area may include on-farm conservation measures (e.g., use of tailwater return systems, irrigation management techniques, and laser leveling of fields) and water delivery system improvements. Multiple fallowing methods also have been identified and could include either removal of land from agricultural production or reduction of multiple crops to fewer crops (or a single crop) for one or more growing seasons or for multiple years. As noted in section 2.5.1, IID anticipates implementing a variety of methods in different combinations in order to achieve the desired amount of conservation within the service area. Section 3.5 of the PEIR evaluates the impacts of conserving all water by fallowing in order to provide a worst-case analysis of agricultural impacts.
2. Approximately 48 percent of the entire area of the State of California has been mapped from the perspective of agricultural land uses, and agricultural lands mapped at the state level total over 26 million acres. Approximately 15 percent of the land in the Southern California region is in agricultural use (California Department of Conservation 2000).

In the entire state, between 1996 and 1998 almost 100,000 acres of land categorized as Prime Farmland were converted to other land use categories (including other farmland classes). Almost 87,000 acres of land were converted to urban and built-up use from other land use categories over the same time period. Of this total, just over 27,000 acres were converted from irrigated farmland. The largest share of this conversion occurred in the San Joaquin Valley region (49 percent), followed by the Southern California region (27 percent), the Central Coast region (8 percent), and the San Francisco Bay region (8 percent) (California Department of Conservation 2000).

3. Under the worst-case scenario, up to 50,000 acres could be fallowed in the IID service area on a long-term or permanent basis. This would represent less than 0.2 percent of the total farmland in the state and about 3 percent of the farmland in Southern California (United States Department of Agriculture 1997). Specific methods for implementing fallowing have not been identified, and it cannot be determined precisely which crops would be fallowed at this point. Given the small percentage of land that would be affected, however, the potential loss of farmland used to produce high-value crops would not significantly affect their continued production in California.
4. Please see the response to CDFG comments 41 and 42.
5. To a great extent, the likelihood of fallowed land being converted to urban land use or other non-agricultural land uses would depend on the land's location and length of time it remains fallowed. Lands close to the boundaries of lands currently zoned for urban uses would have a higher probability of converting to non-agricultural land uses. Additionally, lands fallowed for extended periods of time would have a higher probability of being converted to something other than agricultural land use in part because of the cost of reclaiming crop lands that have not been cultivated or irrigated for extended periods. While proximity to urban land uses or extended fallowing could make fallowed

lands more attractive to development, conversion to a non-agricultural land use would require local approval of the change in zoning and General Plan designation, which is not a part of the Proposed Project. In section 3.5.2.3, however, it is stated that if farmland is taken out of production on a longer-term or permanent basis, it would result in the conversion of Important Farmland to non-agricultural use. If short-term or rotational fallowing were implemented, this would not affect the irrigation status of fallowed lands since it would go without irrigation only temporarily.

6. A reduction in the amount of productive agricultural land through fallowing could have a negative effect on the regional economy. As noted in section 3.13.2.3 of the PEIR:

If the reduction in water use was accomplished solely through land fallowing, Imperial County could experience a net loss of up to 1,400 jobs, mostly in the agricultural sectors. Such a change would comprise just under 3 percent of the Year 2000 county employment level. Net agricultural sector job losses would total up to 1,300, representing about 12 percent of the total county agricultural employment. The net decrease in the value of business output is estimated to be up to \$98 million. This represents approximately 2 percent of the estimated \$4.8 billion total value of business output for Imperial County (IID and USBR 2002). This would not represent a significant impact to population, housing, or employment.

Specific methods for implementing fallowing have not been identified, and it cannot be determined precisely which crops would be fallowed at this point. It is likely, however, that a variety of crops would be affected and that an entire crop would not be eliminated from production. It is unlikely that reductions in agricultural activity of the magnitude associated with fallowing would markedly affect the viability of agriculture in Imperial County.

7. As noted in section 3.5.3, the only way to avoid the impact associated with the conversion of Important Farmland in the IID service area is to use non-fallowing conservation measures or short-term fallowing. The discussion also indicates that the exclusive use of short-term fallowing may not be feasible for generating conserved water and use of agricultural land on a long-term basis may be required. Thus, the risk that land would lose its Prime or Statewide Importance classifications cannot be completely eliminated.
8. As noted in the comment, the PEIR contains a measure that would avoid impacts to Important Farmland or farmland under a Williamson Act contract altogether. The only two sites that are now under consideration as recharge basins are in the vicinity of Dike 4 and the Martinez Canyon and are not on farmland. Not locating the recharge basins on Important Farmland or farmland subject to a Williamson Act contract is thus considered a feasible mitigation measure, and there is no reason to anticipate that use of farmland would be required. No further measures are necessary.

References

California Department of Conservation, Farmland Mapping and Monitoring Program. 2000. California Farmland Conversion Report 1996-98, Chapter 2, Tables 1 and 3.

United States Department of Agriculture, National Agricultural Statistics Service. 1997. Census of Agriculture, County Data, Table 13.



California Regional Water Quality Control Board

Colorado River Basin Region



Winston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

APR 16 2002

SAIC SANTA BARBARA

April 10, 2002

QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

SUBJECT: DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT IMPLEMENTATION
OF THE COLORADO RIVER QUANTIFICATION SETTLEMENT AGREEMENT

Thank you for providing us the opportunity to comment on the subject document. The document addresses the aggregate impacts of implementing components of the proposed Colorado River Quantification Settlement Agreement to apportion water from the Colorado River among the Coachella Valley Water District, Imperial Irrigation District, San Diego County Water Authority, and the Metropolitan Water District of Southern California.

We have the following comments:

ES-4 Lines 25 and 27-31 Increased selenium concentration is identified as a significant and unavoidable impact. The subject document concludes that "no reasonable mitigation is available". The
1
aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with
the conclusion, as Best Management Practices (BMPs) are available to address selenium impacts. Such
BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium
reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid
membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will
require Imperial Valley farmers to address selenium impacts through BMP implementation. The final
PEIR must address measures to reduce selenium impacts.

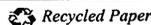
ES 7-19 Hyper-eutrophication of the Salton Sea is not addressed. 14 CFR 15126.2 requires the
2
"inclusion of relevant specifics of the area." The document fails to do so.

ES-10 Lines 1-8 What will be implemented? It is stated that "standard construction practices will be
3
developed." However, 14 CFR 15126.4 requires that "An EIR shall describe feasible measures which
could minimize significant adverse impacts."

ES-17 What mitigation will be implemented for these alternatives? It is stated that these alternatives will
4
"avoid significant impacts on the Salton Sea" the mitigation is not developed in the PEIR or in the
EIR/EIS for the IID Water Transfer. CEQA 14 CFR 15126.4 requires that "An EIR shall describe
feasible measures which could minimize significant adverse impacts."

ES 19 Lines 15-25 The subject document fails to describe the plan to be implemented, and improperly
5
defers selection and analysis of a mitigation measure until after the EIR is certified, thus precluding
public review (14 CFR 15126.4). We are unable to determine the effects on water quality when the plan
has not been developed.

California Environmental Protection Agency



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Table ES-1 Increased selenium concentration is identified as a significant and unavoidable impact after mitigation. The subject document concludes that “no reasonable mitigation is available”. The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) *are* available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts. | 6

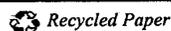
Table ES-1 (page 11 of 29) Increased selenium concentration and an increase in TDS are identified as a significant and unavoidable impact after mitigation. The subject document concludes that “no reasonable mitigation is available”. The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) *are* available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts. | 7

Table ES-1 (page 23 of 29) It is stated that “The Proposed Project could increase salinity by as much as 1 mg/L below Hoover Dam and by as much as 8 mg/L at Imperial Dam. It is assumed, however, that additional salinity control measures would be implemented and water quality objectives would be met.” However, 14 CFR 15126.4 requires that “An EIR shall describe feasible measures which could minimize significant adverse impacts.” The subject document fails to describe the plan to be implemented, and improperly defers selection and analysis of a mitigation measure until after the EIR is certified, thus precluding public review (14 CFR 15126.4). We are unable to determine the effects on water quality when the plan has not been developed. | 8

Table ES-1 (page 26 of 29) The document states, “...there is no water quality standard for salinity in the Salton Sea....” This statement is incorrect. Water Quality Objectives for the CRWQCB--CRBR are contained in Chapter 3 of the “Water Quality Control Plan for the Colorado River Basin Region” (CRWQCB--CRBR 1994). In addition to general surface water objectives, the Basin Plan contains established site-specific water quality objectives for the Salton Sea for Total Dissolved Solids and selenium. Therefore, we find that all subject document statements premised on the aforementioned statement technically deficient (14 CFR 15126.2, 14 CFR 15126.4). | 9

Table ES-1 (page 27 of 29) How will funding be provided? Who will provide the funding and who will decide if it is necessary? CEQA 14 CFR 15126.4 requires that “An EIR shall describe feasible measures which could minimize significant adverse impacts.” | 10

California Environmental Protection Agency



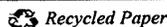
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Table ES-2 (page 2 of 6) Salton Sea Restoration Project - The fact that Restoration Project proponents have not selected a project alternative does not permit the project proponents to avoid analyzing the impacts of the Proposed Project on the Salton Sea, nor does it permit the deferment of mitigation alternatives to the Restoration Project’s next draft EIR/EIS (14 CCR 15126.4 (B)). The project proponents cannot escape responsibility for mitigating the impacts of <i>its</i> project by assuming that the Restoration Project will either address these issues, or render the issue moot by determining that restoration is not feasible.	11
Table ES-2 (page 6 of 6) There is an additional salinity control project entitled Colorado River Basin Salinity Control Program being conducted by the U.S. Bureau of Reclamation that needs to be included in the Cumulative Impacts analysis.	12
3.0.3 Lines 1-23 Impacts on sea elevation, salinity and surface area need to be accounted for in relationship to the Salton Sea Restoration Project and/or TMDLs.	13
3.1.3 Line 25. Delete Implementation Plan.	14
3.1-3 Line 28 Edit the document from “has been proposed” to “ have been adopted by Regional Board and approved by State Board.”	15
3.1-3 Line 30 Edit the document from “have been proposed for bacteria” to “have been adopted by Regional Board and approved by State Board for pathogens in the New River.”	16
Table 3.1-1 TMDL Completion Date- Edit the document from TMDL Completion Date for New River Bacteria/Pathogen of “proposed TMDL” to “Proposed Basin Plan Amendment.”	17
Line 32-33 Edit “, but this objective does not apply to agricultural discharges” to “,any discharges, excepting discharges from Agricultural sources.”	18
Table 3.1-3 footnote a- Edit footnote a to “for average annual TDS discharges.”	19
Table 3.1-4 footnote a- Edit footnote a to “for average annual TDS discharges.”	20
3.1-10-11, p 3.1-15-17 (all tables) There are applicable narrative criteria for all/most of the constituents that are marked “NS.”	21
3.1-21 Lines 13-14 Inflow is expected to decrease based on what factors, e.g., transfer is approved? Anything else, e.g., conservation, TMDLs?	22
3.1.21 Line 24 Change “bacteria” to “pathogens.”	23

California Environmental Protection Agency



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3.1.28 Line 26 Increased selenium concentration is identified as a significant and unavoidable impact after mitigation. The subject document concludes that “no reasonable mitigation is available”. The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) *are* available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts. | 24

3.1.29 Table 3.1-15 Impact significance. Increased selenium concentration is identified as a significant and unavoidable impact after mitigation. The subject document concludes that “no reasonable mitigation is available”. The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) *are* available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts. | 25

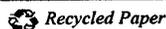
3.2-30 Lines 29-40 Comment does not consider impacts to the river delta areas. The extent of habitat impacts have not been quantified or discussed in this document. Federal Endangered Species Act § 10 (2) (A) (i)(ii) states that, “The impact that will likely result from such taking, (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps” requires such analysis. 14 CFR 15126.2 states, “Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving the consideration to both the short-term and long-term effects.” The subject document inadequately addresses habitat impacts of the Proposed Project. | 26

Section 4 Cumulative Impact Analysis- Whenever this project will have an impact on another project, and the other project has a beneficial impact on water quality, the conclusions reached for cumulative affects is always “no cumulative impact.” The document fails to address the fact this project may cause the beneficial project not to happen due to higher costs or lower feasibility. | 27

The “Cumulative Impacts” section needs to discuss:

- the Proposed Project’s impact on the Salton Sea Restoration Project regarding: (a) how restoration costs would increase, and (b) impacts on restoration alternatives (the Salton Sea Authority has come out with a list of alternatives). Proposed Project implementation probably will double the rates at which salinity and selenium concentrations increase, 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. | 28
- the Proposed Project’s impact on TMDL development and implementation. | 29

California Environmental Protection Agency



Implementation of the Colorado River Water
Quantification Settlement Agreement
PEIR SCH # 2000061034

- 5 -

April 10, 2002

• the Proposed Project’s impact on TMDLs already adopted by the CRWQCB—CRBR and SWRCB (14 CFR 15130). | 30

4-13, 4.2.8 Change to Colorado River Basin Water Quality Control Plan. The WMI is part of the yearly process, but not the regional Water Quality Control Plan. | 31

4-14 Lines 1-7 Increased selenium concentration is identified as a significant and unavoidable impact after mitigation. The subject document concludes that “no reasonable mitigation is available”. The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) *are* available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts. | 32

4-14 Lines 27-35 The fact that Restoration Project proponents have not selected a project alternative does not permit the project proponents to avoid analyzing the impacts of the Proposed Project on the Salton Sea, nor does it permit the deferment of mitigation alternatives to the Restoration Project’s next draft EIR/EIS (14 CCR 15126.4 (B)). The project proponents cannot escape responsibility for mitigating the impacts of *its* project by assuming that the Restoration Project will either address these issues, or render the issue moot by determining that restoration is not feasible. | 33

4-15 Lines 19-21 14 CFR 15130 requires discussion of cumulative effects, “...shall the severity of the impacts and their likelihood of occurrence...”. The draft report does not, but must, include discussion of potential cumulative impacts of TMDLs, selenium control projects on the Colorado River, and wastewater diversion for Mexicali power plants. | 34

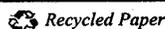
We suggest that you check our website at <http://www.swrcb.ca.gov/rwqcb7/> for more up to date information on the 303 (d) list, and Total Maximum Daily Loads (TMDLs) being prepared for our Region. If you have any questions, please contact me at (760) 346-7491. | 35

Sincerely,



TERESA NEWKIRK, Senior Environmental Scientist
TMDL Development Unit Chief

California Environmental Protection Agency



Implementation of the Colorado River Water
Quantification Settlement Agreement
PEIR SCH # 2000061034

- 6 -

April 10, 2002

TN:tn

File: CR-WATER TRANSFER

CC:

State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044

Eugenia McNaughton
US Environmental Protection Agency (W-1)
75 Hawthorne Street
San Francisco, CA 94105

California Environmental Protection Agency

 Recycled Paper

California Regional Water Quality Control Board (RWQCB), April 10, 2002

1. The proposed Total Maximum Daily Load (TMDL) that will target selenium reduction will be implemented throughout the Colorado River Basin and focus on source reduction in the basin. Correspondence from the RWQCB states that: “It is our understanding that the proposed selenium TMDL would focus on selenium throughout the upper and lower Colorado River Basin States (Colorado River Watershed), and would address selenium reduction at the sources, but could also include management practices to address concentrating of selenium in Imperial Valley.”⁹ This statement is consistent with the co-lead agencies’ view that mitigation to meet numerical criteria is not practical unless it is carried out within the context of a more extensive mitigation effort. The use of wetland management and other methods to control selenium within the Project area is not considered feasible since these methods would not address the regional sources of selenium within the Colorado River Basin.
2. The referenced section quoted only summarizes major issues. Section 3.1.1.6 addresses the nutrient loading levels in the Salton Sea. The Proposed Project would not result in increased nutrient loading; rather, as noted in Table 3.1-22, the Proposed Project would decrease the amount of pesticides (which include nutrients) entering the Sea since it would receive less agricultural drainage. (This reduction in tailwater flows would be consistent with Best Management Practices identified for the proposed nutrient TMDL being established for the Salton Sea.)
3. The text in section 4.3.1 and ES-5.1 has been modified to indicate the types of mitigation measures that would be implemented in order to prevent water quality impacts. The precise measures will depend upon the specific sites that are selected and specific construction practices that will be developed.
4. Mitigation measures have not been included for QSA alternatives because CEQA requires mitigation measures to be identified for the proposed project only. Under CEQA, mitigation methods and alternatives are somewhat interchangeable; both have the objective of reducing the proposed project’s significant effects. See CEQA Guidelines Sections 15126.4(a) (mitigation) and 15126.6(a) (alternatives).
5. The PEIR is required to and does describe project alternatives and mitigation strategies that could reduce significant impacts to the Salton Sea. The selection of alternatives or mitigation measures to reduce Salton Sea impacts will occur when the co-lead agencies adopt CEQA findings for the implementation of the QSA. It is not required that this information be provided in the PEIR.

Note that further discussions with the U.S. Fish and Wildlife Service and the California Department of Fish and Game after release of the Draft PEIR resulted in the elimination of Mitigation Strategy 1 from consideration. Mitigation Strategy 2 alone is now proposed to mitigate the significant impacts associated with biological and other resources.

⁹ Correspondence from Teresa Newkirk Gonzales, dated April 18, 2002.

6. Please see the response to comment 1 above.
7. Please see the response to comment 1 above.
8. The text in the summary table is referring to the salinity control measures that are implemented under the Colorado River Salinity Control Act, which is described in section 3.1.1.1. This has been clarified in the table and section 3.1. As noted in this section:

The Colorado River Basin Salinity Control Forum reviews the numeric criteria and plan of implementation every 3 years and makes revisions to accommodate changes occurring in the Basin States, most recently in 1999. At each triennial review, the current and future water uses are analyzed for their impact on the salinity of the Colorado River, including projects proposed as part of Reclamation, U.S. Department of Agriculture, and the Bureau of Land Management salinity control programs. If needed, additional salinity control projects are added to the implementation plan to assure compliance with standards. The need for one or more additional salinity control projects is determined by monitoring the salinity of the River and making near-term projections of changes in diversions from and return flows to the River system. When an additional project is needed it is selected from a list of potential projects that have undergone feasibility investigation. In selecting a project, considerable weight is given to the relative cost-effectiveness of the project. Environmental feasibility is another factor considered.

Thus, the PEIR does describe the plan to be implemented and does not defer analysis.

9. The objectives referenced in the Basin Plan are not standards, but are associated with potential improvement of water quality at the Salton Sea. These levels have already been exceeded (the current salinity level is 44,000 mg/L, whereas the objective is 35,000 mg/L) and are not considered standards from a regulatory standpoint.

The Basin Plan states:

The water quality objective for the Salton Sea is to reduce the present level of salinity and stabilize it at 35,000 mg/L unless it can be demonstrated that a different level of salinity is optimal for the sustenance of the Sea's wild and aquatic life. *However, the achievement of this water quality objective shall be accomplished without adversely affecting the primary purpose of the sea, which is to receive and store agricultural drainage, seepage, and storm waters* (italics added). Also, because of economic considerations, 35,000 mg/L may not be realistically achievable. In such case, any reduction in salinity which still allows for survival of the sea's aquatic life shall be deemed an acceptable alternative or interim objective....it is unreasonable for the RWQCB to assume responsibility for this objective....

The Basin Plan does contain selenium objectives, but they apply to the tributaries of the Salton Sea and not the Sea itself.

10. The PEIR does described potentially feasible mitigation measures for significant impacts. The co-lead agencies will be responsible for implementing the adopted mitigation measures in accordance with legal requirements. In accordance with CEQA Guidelines Sections 15091 and 15096(h), they must prepare findings that the Proposed Project has been changed (including by the adoption of mitigation measures) in a manner that avoids or substantially reduces each significant impact. When making the findings, the agencies must ensure that the adopted mitigation measures are fully enforceable through permit conditions, agreements, or other measures. If the agencies cannot make these findings, they must find that changes to the Project are within another agency’s jurisdiction and that such changes have been or can and should be adopted by the other agency or that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures. CEQA Guidelines Sections 15091(d) and 15097 also require lead agencies to adopt a Mitigation Monitoring and Report Program (MMRP), which ensures compliance with adopted mitigation measures during project implementation. The MMRP must clearly state who is responsible for implementing a given mitigation measure, how and when the measure will be implemented, and how its implementation will be verified.
11. This table summarizes the *cumulative* impacts of the Proposed Project in combination with the impacts of other projects. In the case of the Salton Sea Restoration Project, the specific cumulative impacts cannot be identified because the restoration alternatives are not known at this time. The impacts of the Proposed Project on the Salton Sea are fully analyzed in the QSA PEIR and mitigation measures have been identified for project-specific impacts. Mitigation of project-specific impacts has not been deferred to the Salton Sea Restoration Project.
12. This is the same program as referenced in the PEIR (sections 3.2 and 4.2.7).
13. Since the alternatives that may be implemented for the Salton Sea Restoration Project are speculative at best, it is not possible to determine its precise relationship to the Proposed Project. As indicated in section 4.2.9 of the PEIR, since the alternative methods of implementing the Salton Sea Restoration Project have not been defined at this time, the cumulative impacts of the Proposed Project and the Salton Sea Restoration Project are speculative. The PEIR acknowledges that depending on the restoration methods selected, cumulative impacts could potentially be significant, but that mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels.

While the RWQCB has been directed by the Environmental Protection Agency (EPA) to develop a TMDL for salinity in the Salton Sea, there is currently no schedule to do so. RWQCB has yet to develop background levels, which is one of the first steps in the process, nor have the load enforcement mechanisms been determined. Thus, it is premature to attempt to evaluate the relationship of this TMDL action to the Proposed Project. As noted in Table 3.1-22, the Proposed Project would decrease the amount of pesticides (which include nutrients) entering the Sea since it would receive less agricultural drainage. Thus, no conflict with future TMDLs for nutrients would occur. TMDLs for selenium are addressed in EPA response no. 17.

Under the Proposed Project, it is anticipated that much of the water conservation would be achieved through reduction of tailwater discharges. This would be expected to lead to a reduction in the mass of nutrients transported in the soluble phase by tailwater to IID drains. In addition, conservation of tailwater would reduce the mobilization of silt and lessen the mass of silt discharged to IID drains. Some nutrients, particularly phosphorus, tend to be adsorbed by fine soil particles. Therefore, a reduction in silt discharge would result in a reduction in discharge of these nutrients. Because the volume of tilewater discharged under the Proposed Project is similar to that discharged under the Baseline, it is unlikely that the mass of nutrients, particularly ammonia, that may enter IID drains through tilewater would be greatly affected by implementation of the Proposed Project or project alternatives. Therefore, implementation of the Proposed Project would be likely to reduce mass loading of nutrients to the Salton Sea and support Best Management Practices introduced under a future Salton Sea nutrient TMDL.

In general, programs such as the U.S. Department of Agriculture/EPA-funded National Water Quality Evaluation Project¹⁰ have recommended management of nutrient applications as the most effective measures for controlling nutrient loadings. Implementation of this type of Best Management Practices would not be influenced by the Proposed Project.

14. The text has been revised to address your comment.
15. The text has been revised to address your comment.
16. The text has been revised to address your comment.
17. The text has been revised to address your comment.
18. The text has been revised to address your comment.
19. The text has been revised to address your comment.
20. The text has been revised to address your comment.
21. The “NS” designation indicates there are no quantitative criteria. It is not reasonable to evaluate numeric data with the narrative data.
22. Even without the Proposed Project, future inflows to the Salton Sea are anticipated to decline. This decline is attributable to: effects of entitlement enforcement of Colorado River water; changes in water use patterns in CVWD (increased efficiency in agricultural practices; conversion of some agricultural land to residential and commercial development; reduction in effluent from fish farms and agriculture to drains [due to increased efficiency]); and changes in Coachella Aquifer interactions with the Sea. The

¹⁰ Priorities, the Key to Nonpoint Source Pollution, Final Report for the Project: “Guidance Document on Targeting of NPS Implementation Programs to Achieve Water Quality Goals, USEPA Office of Water Regulations and Standards, Washington, D.C., July 1987

Baseline water budget assumed for the Salton Sea can be found in Table 4.1 of Appendix F of the IID Water Conservation and Transfer EIS/EIR.

23. The text has been revised to address your comment.
24. Please see the response to RWCQB comment 1.
25. Please see the response to RWCQB comment 1.
26. The commenter is correct that the analysis of the impacts to the river deltas is not provided in the referenced section; however, section 3.2.1.2 of the PEIR provides a detailed analysis of the effects of the Proposed Project in the IID service area that includes impacts to vegetation, wildlife, and sensitive species within the river delta areas. Furthermore, section 3.2.3 provides mitigation strategies to mitigate the impacts to the tamarisk scrub and drain habitats, which would occur within the delta areas.
27. “Cumulative impacts” refer to two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. In keeping with CEQA requirements, the PEIR focused on the Proposed Project’s adverse impacts when added to the adverse impacts of related projects. Speculating whether implementing the QSA would cause another project not to happen due to higher costs or lower feasibility is not required under the CEQA Guidelines (Sections 15144 and 15145).
28. Potential alternatives for the restoration of the Salton Sea have not been identified publicly; thus, it would be speculative to estimate how restoration costs would be affected by the Proposed Project. Further, as indicated in section 4.2.9 of the PEIR, since the alternative methods of implementing the Salton Sea Restoration Project have not been defined at this time, the cumulative impacts of the Proposed Project and the Salton Sea Restoration Project are speculative. The PEIR acknowledges that depending on the restoration methods selected, cumulative impacts could potentially be significant, but that mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels.
29. The Proposed Project would not impact the development of the selenium TMDL, Alamo River silt TMDL, silt New River silt TMDL, New River pathogen TMDL, or the nutrient TMDL for the Salton Sea. The selenium TMDL would be implemented throughout the Colorado River Basin to reduce the level of selenium entering the Imperial Valley. Reduction in tailwater flow from the Proposed Project would be consistent with the New and Alamo River silt TMDLs and the Salton Sea nutrient TMDL. No impacts associated with the implementation of the New River pathogen TMDL would occur since the drains and other features of the IID system that would be affected by the Proposed Project are not substantial sources of these pathogens.
30. No impact to adopted silt TMDLs would occur due to implementation of the Proposed Project.

Alamo River Silt TMDL: According to the Basin Plan, the Alamo River silt TMDL is to be phased in over a period of 13 years. Modeling results from the IIDSS indicate that for the

Proposed Project, the 12-year, flow weighted concentration of total suspended solids (TSS) would be below the Phase 1 TMDL numeric criteria of 320 mg/L. As more stringent TMDL numeric criteria are phased in, there is the possibility that over time these criteria would not be achieved for the Proposed Project based on the predicted (modeled) water quality data.

The IIDSS modeling of sediment loading is not adjusted to factor in future improvements to drain water quality resulting from the application of Best Management Practices (BMPs) under the TMDL because the IID Revised Drain Water Quality Improvement Plan is currently being developed and information on how these BMPs may affect project actions is not available. Therefore, any predictions regarding the effectiveness of future BMP implementation measures, the necessity of such measures and how they would affect the Alamo River silt TMDL is premature at this time.

Thus, the reductions in tailwater volumes generated from on-farm conservation measures under the Proposed Project would result in reductions in the mass of silt eroded from farm fields and discharged to IID drains. For this reason, the Proposed Project is expected to reduce silt loadings to the Alamo River and to contribute to the achievement of the objectives of the TMDL. The fact that tailwater reduction is the major mechanism for water conservation under the Proposed Project illustrates the parallel between BMPs likely to be introduced under the TMDL and water conservation measures likely to be introduced under the Proposed Project. Therefore, to the extent that on-farm conservation measures are included, implementation of the Proposed Project is expected to complement implementation of the Alamo River silt TMDL. If fallowing were implemented as an on-farm conservation measure, it would eliminate tailwater and silt discharges from fallowed fields.

New River Silt TMDL: A silt TMDL for the New River is scheduled for consideration for adoption at the June 2002 Regional Board Meeting. As was noted with reference to the Alamo River silt TMDL, the reductions in tailwater generated under the Proposed Project are expected to result in a decrease in silt discharge to drains in the New River Basin. The impacts of implementation of the Proposed Project on TSS concentrations in the New River would be buffered to some degree because of the silt inflows at the International Boundary with Mexico. Nevertheless, the parallel between implementation of the Proposed Project and implementation of BMPs for silt control that would exist in the Alamo River Basin would also exist in the New River Basin.

31. This change has been made to page 4-13.
32. Please refer to response no. 1.
33. Please refer to response no. 11.
34. A discussion of the cumulative impacts of the Mexicali power plants has been added to section 4.2.15. No discussion of the cumulative impacts of TMDLs is required. Existing TMDLs are part of the baseline condition, and the details of how proposed or future TMDLS would be implemented are not known. Additionally, according to CEQA Guidelines Sections 15064(i) and 15130(b), the discussion of cumulative impacts should

focus on the cumulative impact to which the other project contributes rather than the attributes of the other projects that do not contribute to the cumulative impact. The Proposed Project would have certain adverse impacts to water quality, but the TMDLs would have beneficial impacts. Thus, no significant cumulative impacts would occur. Also refer to EPA response no. 24. The only potential selenium control projects on the Colorado River are dependent upon future federal appropriations and thus are speculative; thus, no such projects have been included in the cumulative impact analysis.

35. The text has been revised to address your comment.



Winston H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board
Colorado River Basin Region

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Gray Davis
Governor

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APR 22 2002

SAIC SANTA BARBARA

April 18, 2002

QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

SUBJECT: CLARIFICATION COMMENTS ON DRAFT PROGRAM ENVIRONMENTAL
IMPACT REPORT IMPLEMENTATION OF THE COLORADO RIVER QUANTIFICATION
SETTLEMENT AGREEMENT

We made the following comments on ES-4 Lines 25 and 27-31; Table ES-1; Table ES-1 (page 11 of 29); 3.1.28 Line 26; 3.1.29 Table 3.1-15; and 4-14 Lines 1-7: "Increased selenium concentration is identified as a significant and unavoidable impact. The subject document concludes that "no reasonable mitigation is available". The aforementioned conclusion is deficient for CEQA purposes (14 CCR 15130). Further, we disagree with the conclusion, as Best Management Practices (BMPs) are available to address selenium impacts. Such BMPs include wetland management for enhancement of selenium volatilization, algal-bacterial selenium reduction systems, use of piping irrigation laterals, and removal of selenium using emulsion liquid membranes. Selenium TMDLs (required by the Clean Water Act) for drains and the Salton Sea will require Imperial Valley farmers to address selenium impacts through BMP implementation. The final PEIR must address measures to reduce selenium impacts."

As a point of clarification, the Selenium TMDL referred to in our comments, has been proposed by U.S. EPA. It is our understanding that it would focus on selenium throughout the upper and lower Colorado River Basin States (Colorado River Watershed), and would address selenium reduction at the sources, but could also include management practices to address concentrating of selenium in Imperial Valley. If U.S. EPA adopts the TMDL, the States would likely be delegated responsibility for implementing applicable provisions. 1

If you have any additional questions, please contact me at (760) 346-7491.

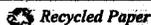
Sincerely,

TERESA NEWKIRK GONZALES, Senior Environmental Scientist
TMDL Development Unit Chief

TN:tn

File: CR-WATER TRANSFER

California Environmental Protection Agency



Implementation of the Colorado River Water
Quantification Settlement Agreement
PEIR SCH # 2000061034

- 2 -

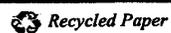
April 18, 2002

CC:

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Sacramento, CA 95812-3044

Eugenia McNaughton
US Environmental Protection Agency (W-1)
75 Hawthorne Street
San Francisco, CA 94105

California Environmental Protection Agency



California Regional Water Quality Control Board, April 18, 2002

1. Thank you for this information; the comment is noted.

REGIONAL AGENCIES

Comments and Responses

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Southern California Association of Governments, March 14, 2002.....R-1



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Riverside County: Bob Buster, Riverside County • Ron Loveridge, Riverside • Greg Pettis, Cathedral City • Ron Roberts, Temecula • Jan Rudman, Corona • Charles White, Moreno Valley
San Bernardino County: Jon Mikels, San Bernardino County • Bill Alexander, Rancho Cucamonga • David Esleman, Fontana • Lee Ann Garcia, Grand Terrace • Bob Hunter, Victorville • Cwenn Norton-Perry, Chino Hills • Judith Valles, San Bernardino
Ventura County: Judy Mikels, Ventura County • Glen Becerra, Simi Valley • Donna De Paola, San Buenaventura • Tom Young, Port Huene
Riverside County Transportation Commission: Robin Lowe, Hemet
Ventura County Transportation Commission: Bill Davis, Simi Valley

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MAR 19 2002

March 14, 2002

Ms. Alicia Gasdich
QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

SAIC SANTA BARBARA

RE: Comments on the Draft Program Environmental Impact Report for the Implementation of the Colorado River Quantification Settlement Agreement - SCAG No. 1 20020072

Dear Ms. Gasdich:

Thank you for submitting the Draft Program Environmental Impact Report for the Implementation of the Colorado River Quantification Settlement Agreement to SCAG for review and comment. As areawide clearinghouse for regionally significant projects, SCAG reviews the consistency of local plans, projects, and programs with regional plans. This activity is based on SCAG's responsibilities as a regional planning organization pursuant to state and federal laws and regulations. Guidance provided by these reviews is intended to assist local agencies and project sponsors to take actions that contribute to the attainment of regional goals and policies.

It is recognized that the proposed Project considers the implementation of a proposed Agreement which will further refine the apportionment of Colorado River water among four water agencies for a period of up to 75-years. The proposed implementation of the Agreement involves a series of water transfers, exchanges, water conservation measures, and other actions identified in the Agreement.

SCAG staff has evaluated the Draft Program Environmental Impact Report for the Implementation of the Colorado River Quantification Settlement Agreement with the current Regional Comprehensive Plan and Guide and Regional Transportation Plan. The Draft PEIR includes a discussion on the proposed Projects' consistency with SCAG policies and applicable regional plans, which were outlined in our June 13, 2000 letter on the Notice of Preparation (NOP) for this Draft EIR.

The Draft PEIR, in Section 3.4, Land Use and Planning, cited SCAG policies and addressed the manner in which the proposed Project is consistent with applicable core policies and supportive of applicable ancillary policies. This approach to discussing consistency or support of SCAG policies is commendable and we appreciate your efforts. Based on the information provided in the Draft PEIR, we have no further comments. A description of the proposed Project was published in the February 1-15, 2002 Intergovernmental Review Clearinghouse Report for public review and comment.

If you have any questions, please contact me at (213) 236-1867. Thank you.

Sincerely,

[Handwritten signature of Jeffrey M. Smith]

JEFFREY M. SMITH, AICP
Senior Planner
Intergovernmental Review

Southern California Association of Governments, March 14, 2002

1. This comment indicated that the analysis of applicable SCAG policies was commendable and no further comments were submitted.

LOCAL AGENCIES

Comments and Responses

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Law Office of Antonio Rossman, Special Counsel to the County of Imperial, February 8, 2002	L-1
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8 February 2002

Memorandum to: State Clearinghouse, Office of Planning and Research
1400 Tenth Street, Box 3044 Sacramento, CA 95812

QSA PEIR, SAIC, 816 State Street, Suite 500,
Santa Barbara, CA 93101

David Osias, Counsel to IID

Scott Slater, Counsel to SDCWA

Steven Abbott, Counsel to CVWA

Jeff Kightlinger, Counsel to MWD

Re: QSA Programmatic EIR SCH 2000061034;
request for extension of time to comment

Colleagues:

The County of Imperial requests that the time to comment on the subject draft EIR | 1
be extended from 17 March 2002 by 30 days to 16 April 2002.

This draft EIR is one of three interrelated and complex EISes or EIRs that are
concurrently in circulation and all related to the proposed IID-SDCWA water transfer now
pending before the State Water Resources Control Board. The other two are the Bureau
of Reclamation Implementation EIS and the IID Water Conservation and Transfer

EIS/EIR. Each of these three documents identifies the others as related to the ultimate decision on the proposed water transfer; and the decisions to flow from each of these documents are also inter-related, and the IID water transfer ultimately conditioned on the other two decisions.

The County of Imperial believes, and trusts that the addressees agree, that each of these environmental documents, like the decisions proposed, informs the others; and that an assessment of the value of each document cannot be made without evaluating the others and then evaluating them as a whole.

The IID EIS/EIR has an established due date of 26 April 2002, with public hearings on that draft now scheduled by IID for 2-4 April. The IA EIS has a due date of 12 March 2002.

In order to make informed comment on the QSA EIR, the County of Imperial believes it will benefit from its analysis of the IID and IA EIS/EIR documents, and also from the public hearings of 2-4 April. A review period closer to the 90 days specified for the IID EIS/EIR would seem appropriate here, which will fulfill the purposes of CEQA to inform the Imperial County Board of Supervisors and Imperial County citizens on these related projects.

We are surprised that the QSA and IA documents, which address subjects as complex as those in the IID EIS/EIR, were not noticed for longer periods. It appears that in both the former cases, the minimum 45 days was used, which is especially unfortunate in that despite the agencies' good efforts to distribute them as soon as possible, the County of Imperial did not receive the QSA document until two days ago.

We recognize the urgency with which the respective lead agencies under all these projects are proceeding, and for that reason we are not asking for the full 90 days for the QSA EIR (nor will we for the IA EIS); but we do believe that an extension beyond the public hearing dates of 2-4 April is indispensable. For that reason we request a 30-day extension to 16 April, and will make the same request of the Bureau of Reclamation with respect to its present 12 March due date for the IA EIS.

Respectfully,



Special Counsel to County of Imperial

cc: Joanne Yeager, Deputy Imperial County Counsel

Law Office of Antonio Rossman, Special Counsel to the County of Imperial, February 8, 2002

1. The co-lead agencies believe that the initial 45-day review period provided adequate time to comment on the Draft PEIR; nonetheless, in response to requests for additional time, the review period was extended from March 15, 2002 until March 26, 2002, for a total of 56 days.

LAW OFFICE OF ANTONIO ROSSMANN

Attorneys at Law

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26 March 2001

via mail and facsimile

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MAR 28 2002
SAIC SANTA BARBARA

Re: County of Imperial Comments on IA EIS and QSA EIR

Greetings:

Introduction

The County of Imperial submits the following comments on the Bureau of Reclamation's Implementation Agreement environmental impact statement (IA EIS) and the four California water agencies' Quantification Settlement Agreement environmental impact report (QSA EIR). The County submits these comments jointly because at this stage the comments on both documents virtually overlap; and the County hopes that the preparers of both documents will benefit from the broadest range of comment that reflect not only on each one but also their interrelationship to each other and to the still-circulating Bureau/IID environmental impact statement/report on the IID-SDCWA long-term transfer (IID-SDCWA transfer EIS-EIR).

The County is grateful to the addressees for extending time to comment until today, without which extension it would not have been possible to provide what we attempt to state here. The County regrets that the time was not extended further, indeed in retrospect until after the close of comment and proceedings on the IID-SDCWA transfer EIS/EIR and transfer itself. At the same time, the County appreciates the pressure of time to conclude review of all three projects referenced in the first paragraph above. At page four of these comments we will propose a procedure that enables the Bureau and QSA sponsors to begin preparation of their final documents with comments received as of today, but also reopens the comment period to permit the agencies to benefit from the still inchoate transfer EIS/EIR and underlying proceedings.

Role and Interest of the County of Imperial

The County of Imperial is foremost a political subdivision of the State of California, deriving its authority from the State Constitution and statutory authority. The County recognizes the urgent need of California to confine its future Colorado River water use to that allocated pursuant to the Law of the River. The County will participate in that effort constructively as part of California, recognizing that the proposed projects identified above could potentially bring benefit to the County of Imperial as well as the entire State. The County also recognizes, as do indeed the EIS and EIR authors, the proposed projects' potential to produce long-term, permanent damage to the environment and economy of Imperial. The County as a non-sponsoring agency thus has perhaps the greatest interest in the success of the NEPA and CEQA review of the IA and QSA, because the County presently lacks the detailed knowledge and experience that the sponsoring agencies have acquired, and relies on NEPA and CEQA review to inform our collective knowledge of the impacts, the ability to mitigate them, the benefits, and hence the ultimate merit of the proposed projects.

The County respects greatly the efforts of the Secretaries of Interior and his and her subordinate agencies, and the California water agencies to address the Colorado River water use constructively. The County appreciates the diplomacy and skill required to formulate, for example, a quantification of California priorities to complete the task left undone from the 1930s; and the efforts of IID to propose a water transfer that brings benefit to the people and environment of Imperial. The County especially appreciates the near-universal recognition by project sponsors that what in the past have been dismissed as "third party impacts" must genuinely be identified in advance -- impacts of both an environmental and related economic nature. What are now needed, in the County's view, is verification of the project impacts, and more importantly mechanisms to ensure their mitigation to an acceptable degree.

The County's concerns remain basically as stated in section 1810 of the California Water Code: to prevent unreasonably affecting Imperial's overall environment and economy. The Bureau and California agencies, to secure that result in cooperation with

the County, must improve their assessments of the following IA- and QSA-induced impacts: loss of available water supply in Imperial County to meet the County's own reasonable future needs; loss of air, visual, and aesthetic quality flowing from changes in the Salton Sea level and in patterns of irrigated agriculture; and economic distress not only to individual farmers but also to the County's secured and unsecured tax revenues, and to social service programs and agencies. At the same time, the projects' assessment of growth- and economic-inducement in the receiving water agencies must be refined, to enable those benefits to be quantified as appropriate sources of mitigation to Imperial, the county of transfer origin.

If the comments that follow seem incomplete, the County readily acknowledges that they are. As Imperial has stated in both public arenas and in individual conferences with project sponsors, the County's evaluations of the water transfer, QSA, and IA are works in progress. The County just yesterday received the opening set of exhibits in the State Water Board proceeding; the County awaits the public hearings on the water transfer EIS-EIR and on the transfer itself, as well as the water transfer lead agency IID's ultimate decision on that project. The County anticipates that the coming weeks will bring much more detailed commentary on the impacts of the QSA and IA, as well as water transfer; and most importantly that the decision of IID on the transfer will for the first time fix the terms of that transfer and its impacts, subject then to the review and decision of the State Water Board. At the same time, in the coming weeks the County anticipates that it will complete the formulation of its proposed mitigation measures to address satisfactorily the County's environmental and economic concerns.

The "Tiering" or "Programmatic" Dilemma

The structure of the IA, QSA, and IID-SDCWA water transfer, and the drafting of the respective environmental documents, suggest that these three projects tier from the first to the second to the third. In reality, however, the reverse is true; by their terms, the transfer defines a necessary element of the subsequently-negotiated QSA, and the transfer and QSA together frame the IA. Thus rather than having the transfer ultimately be framed by an initially-formulated programmatic IA, in reality these are "bottom up" rather than "top down" arrangements.

The transfer agreement at the bottom frames the overall impact of the QSA; and the QSA in the middle frames the overall impact of the IA. That circumstance is confirmed by the Bureau's 1 March 2002 letter extending time to submit these comments, which states that "Reclamation will not make any final decision on the proposed Implementation Agreement until both the IA EIS, and the Imperial Irrigation District Water Conservation and Transfer Project EIR/EIS are finalized and the public comments on both documents have been fully considered."

The Bureau, coincidentally lead federal agency on both the IA and water transfer EISes, can resolve this dilemma in two ways. First, the IA can be refined to make clear

that it is not conditioned on any specific form of water transfer agreement or QSA, but instead that the IA will accommodate whatever form of transfer IID initially authorizes and the State Board subsequently approves. Similarly, the California water agencies can refine the QSA to quantify the allocations of priorities identified in the 1931 Seven Party Agreement, subject to subsequent transfers and exchange agreements between and among the California water agencies -- but without fixing up front the terms, quantities, or ranges of those transfers or exchanges. (In NEPA terms it thus remains prejudicially significant that the QSA alternatives are framed in terms of transferring the "minimum allowable" according to the 1998 agreement.) Only in this way can the Bureau and California water agencies avoid the error of having the IA or QSA effectively pointing the gun at IID and ultimately the County of Imperial, by defining the transfer before its environmental or State Water Board review has been completed.

The second resolution of the dilemma is for both the Bureau and California water agencies to proceed as the Bureau's 1 March 2002 letter suggests: to withhold their decisions on the IA and QSA until the individual components have been analyzed and finalized. The County is grateful that the Bureau has confirmed this sequence with respect to the IA. The California water agencies need to do the same with respect to the QSA.

The problem remains, however, that without subsequent direction, the opportunity to comment on the environmental assessment of the IA and QSA ends today -- well in advance of the fixing of the terms of the water transfer. In the County's view, the only cure to this NEPA and CEQA deficiency is for the IA and QSA lead agencies to reopen comment on the present environmental documents after the water transfer terms have been fixed by IID and State Water Board decisions. The County of Imperial expressly requests that reopening.

(The County notes that just as the transfer agreement remains non-final, so has the forthcoming Draft Salton Sea Restoration Alternatives Report not been published. Consideration and possible adoption of these alternative restoration strategies will frame the overall impact of the IA and QSA as much as will the final transfer agreement.)

The California Lead Agency Question

This comment pertains only to the QSA EIR. That document has been presented, both at the notice of preparation and now in its draft form, as prepared by four co-lead agencies. In its scoping comments the County of Imperial questioned this procedure and asked to receive a copy of the lead agency agreement or any authorization of that agreement by the California Office of Planning and Research. The County repeats that unfulfilled request here. The County questions whether CEQA guidelines and case law authorize an EIR that is not prepared under the direction of a single, principally responsible lead agency. At the same time, the County can readily empathize with the four California water agencies' desire to avoid assignment of this responsibility to a single lead. The County asks that this issue be addressed and responded to.

Specific Impact Concerns to Imperial County

Imperial County Water Supply.

The documents appropriately attempt to address impacts of the water transfer component on agriculture in Imperial County, but do not address the County's future water needs outside the agricultural sector. The underlying premise of the water transfer, QSA, and IA seems to be that Imperial County agriculture through IID will conserve as much water as practicable and make all of that conserved water available for transfer outside the County. Nowhere does the assessment identify existing non-agricultural use in Imperial County or the County's future beneficial needs. The EIS and EIR show that Imperial County will in the next two decades be the most rapidly growing of any of its California counterparts, doubling in population from 142,000 to 294,000. The population of San Diego County is anticipated to rise to 3,800,000, which will be served according to the SDCWA urban water management plan by 813,000 AFA (or a ratio of .21 AFA per capita). Even if one applied the same coastal-region ratio to arid Imperial County, the County's future needs would at least amount to 62,900 AFA. The EIS and EIR must show that the projects will enable at least 63,000 AFA to remain in Imperial County to meet future domestic and urban needs there, or propose mitigation measures to achieve that objective. 6

Fallowing.

A major benefit of the present EIS and EIR is that they show that while the 1998 water transfer prohibits the use of permanent fallowing to generate conserved water, subsequent agreements that comprise the QSA assertedly authorize fallowing, and this practice may be necessary to produce transfer benefits without adverse effects resulting from accelerated Salton Sea decline. 7

The County in the past has recorded its policy disfavoring fallowing as a conservation technique. That position has been subsequently ratified in state law, particularly present California Water Code section 1011, which only recognizes fallowing as a source of conserved water if it is "temporary" or part of "crop rotation." The EIS and EIR assume that non-temporary fallowing can become part of the purpose of the IA and part of the project of the QSA, without addressing the provisions of section 1011.

The County recognizes that a literal reading of the 6-06-01 draft QSA defines fallowing for a term of up to 75 years as "temporary." QSA, ¶ 1.1(56). The County questions whether this definition can be squared with the statutory context of section 1011, or common sense. The County requests a response to these observations, including if appropriate correcting the County's literal reading of the QSA.

"Fallowing" is a subject on which the County is devoting extensive efforts among the Board of Supervisors, staff and consultants, and other constituencies. The County's failure to specify further comment on that subject now, including suggested mitigation measures, should not lead the agencies to conclude that the County will not address this necessary issue more completely in its water transfer DEIR comments and the State Water Board proceedings. 8

Air Quality.

The County will provide expert testimony to the water exchange DEIR and to the State Water Board addressing this issue; that testimony is still in preparation. The County notes summarily these concerns with the air quality analysis and assumptions in the IA and QSA assessments. The asserted 20,000-acre baseline of fallowed lands assumes that this much acreage is out of production for a season or more; in actuality, most of those lands are idle for only a month or two between crops. Water needs to mitigate dust emissions from fallowed lands are not addressed. The wind measurements have not included the sites that are most reflective of air quality near the Salton Sea, and those data that are included appear in part to be incorrect. And in a nutshell, the assumption or assertion that the Salton Sea cannot be compared to Owens Lake does not stand up; in actuality, the impacts, both by nature and degree, are distressfully congruent. 9

Growth Induction.

The QSA EIR commendably recognizes that the "no project" scenario includes the reasonably foreseeable consequence that MWD will lose up to 650,000 AFA from the Colorado Aqueduct. Despite this loss without the projects, the IA and QSA are not projected to induce growth in the San Diego water service area. It is not a sufficient answer to say that the IA and QSA change the distribution of existing California supplies from the Colorado; the impacts are generated by changing the *places* of use and *purposes* of use. Common sense inquires, "Why is the transfer proposed as part of the IA and QSA, if *not* to enable future growth in San Diego?" Nor does it matter that the projects will not change existing land use or water supply "assumptions," especially in light of recently-enacted S.B. 221 and S.B. 601, and their requirements for new development to be founded on assured drought-year supplies. The current SDCWA urban management plan projects a fixed 303,630 AFA "firm" supply from Metropolitan from now to 2020 based on MWD's represented 2.1 MAF "firm" supply. But as the QSA EIR indicates, without the QSA and IA projects, MWD would lose approximately 650,000 AFA from the Colorado, reducing its "firm" supply from that source and the State Water Project to a combined total of approximately 1.6 MAF (660,000 AFA from the Colorado, plus approximately 50 percent of MWD's 2.1 MAF SWP "entitlement"). (These expectations reflect normal deliveries; in time of drought the MWD supply would be even smaller.) Not surprisingly, indeed, the SDCWA urban management plan shows that the IID transfer 10

is *vital* to maintain the San Diego "expectation" of serving a population that will expand from a present level of 2.8 million to 3.8 million. 10

The County of Imperial does not raise the "growth induction" issue to enter a debate about the future composition of the greater San Diego community, but instead to ensure that the assessments include recognition of the tremendous economic value of the transferred water to that community (or other urban communities in the receiving water agencies). That economic value becomes a source of mitigation beyond compensation paid to IID farmers for Imperial Valley impacts that transcend those on the farm. The IA and QSA EIS and EIR must recognize and quantify the growth inducing impacts of their respective projects in the water-receiving communities.

Socio-Economic Impacts.

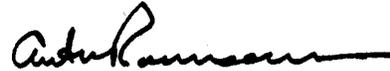
The IA EIS commendably recognizes the relevance of socio-economic impacts to the environmental assessment and the ultimate projects to be approved. A collapse of the agricultural economy in Imperial County, resulting from flawed implementation of the water transfer, could produce environmental consequences far beyond those contemplated by selective water conservation techniques. Economic distress to the County itself, through loss of secured and unsecured tax revenues, could translate into distressed public facilities, housing, and health. The IA EIS defers to the analysis of these impacts within the water transfer EIS/EIR, taking advantage of the Bureau being federal lead under both EISes. The County of Imperial's assessment of and comments on the water transfer EIS/EIR, therefore become an important component of the County's assessment of the present EIS. The County anticipates in its water transfer EIS/EIR comments and in the State Water Board proceedings that it will critique the socio-economic assessment, supplement it to the degree possible within time constraints, and most importantly attempt to formulate that which is missing from both the IA EIS and the water transfer EIS/EIR: mitigation measures to prevent adverse socio-economic impacts. 11

As the County reads the QSA, it does not address socio-economic impacts at all, even though they are related to the ultimate environmental quality of carrying out a QSA project. The QSA EIR must give these impacts at least the same analysis they are accorded in the IA and water transfer documents, and move from that point to identify mandatory mitigation measures.

Conclusion

The County of Imperial requests that the lead agencies respond to the above comments, and that the opportunity to provide further comments on the draft EIS and EIR be renewed at the conclusion of proceedings on the IID-SDCWA water transfer agreement. 12

Respectfully submitted,



Special Counsel to the County of Imperial

cc: Laura Simonek, MWD
FAX (213) 217-6704

Imperial County Board of Supervisors
Imperial County Counsel
Imperial County Planning Director

Law Office of Antonio Rossman, Special Counsel to the County of Imperial, March 26, 2002

1. The comments on the Implementation Agreement (IA) EIS are noted. The basic terms of the QSA have been established and are included in Appendix A. The impacts of the actions that would implement these terms bracket the maximum physical environmental changes that could occur if the QSA as a whole were implemented. Some contractual changes could occur prior to the finalization of the QSA, but these would not affect the impact analysis in the PEIR. Thus, the terms of the QSA have been established in sufficient detail to support the development of this PEIR and, in fact, provide a worst-case analysis of all environmental impacts. Also refer to response no. 2.
2. The comments on the IA EIS are noted. The QSA EIR is a Program EIR, analyzing the impacts of a broad range of actions. Some components of the Proposed Project (e.g., the Coachella and All American Canal Lining Projects) already have completed CEQA analysis. Others, such as the IID Water Conservation and Transfer Project EIR/EIS and CVWD Water Management Plan PEIR, are still in process. There is no requirement under CEQA that the analysis of individual components be finalized prior to making decisions regarding the QSA.
3. Refer to response nos. 1 and 2. The QSA PEIR analyzes impacts at a program level and is intended to identify the maximum environmental impacts that could result from implementing the IID/SDCWA water transfer. More specific details are described in the project-specific analysis contained in the IID Water Conservation and Transfer Project EIR/EIS, but impacts and mitigation measures are similar to those described in the QSA PEIR. Further, the SWRCB decision will govern only project-specific details of the IID/SDCWA water transfer, not the QSA. There is no requirement under CEQA to reopen the comment period as suggested.
4. The PEIR identifies the Salton Sea Restoration Project as a related action in section 1.5. It also is considered in the cumulative impact analysis (refer to section 4.2.9). The PEIR identifies the restoration alternatives that were under consideration at the time it was issued. CEQA does not require that an EIR be delayed in order to include the results of all future studies. Rather, environmental documents are to rely on information that is available at the time they are prepared.
5. Although normally there is a single lead agency, nothing in CEQA, the State CEQA Guidelines, or case law prohibits co-lead agencies. CEQA Guidelines Section 15051(d) state that when two or more public agencies have a substantial claim to be the lead agency, they may establish an agreement to “provide for cooperative efforts by two or more agencies by contract, joint exercises of power, or similar devices.” For the QSA, having four co-lead agencies also furthers CEQA’s policies of reducing paperwork and delay (CEQA Guidelines Section 15006). Since all four co-lead agencies plan to certify the QSA EIR at approximately the same time, it is more efficient for all four to be co-lead agencies. Each agency will be accountable for making CEQA findings and adopting feasible mitigation measures; the findings and adopted mitigation measures are planned to be consistent for each lead agency. This process is more efficient than having a single lead agency and three responsible agencies, and does not change accountability for making CEQA findings and adopting feasible mitigation measures.

Regarding case law on lead agency designations, it is correct that *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, required that if agencies share responsibility for implementing a project, the agency with “principal responsibility” for implementing the project should be the lead agency. In that case, the court found that the Department of Water Resources had principal responsibility for project implementation, and that Central Coast Water Agency was not the appropriate lead agency because it did not have principal responsibility for project implementation.

In contrast, for the QSA PEIR, three of the co-lead agencies are signatories to the QSA, and thus have shared principal responsibility for implementing the QSA. The fourth agency, SDCWA, has principal responsibility (shared with IID) for implementing the IID/SDCWA water transfer, a central project of the QSA.

The request to send a copy of the lead agency agreement to Imperial County is not related to the content of the PEIR; a copy of the lead agency agreement has been sent to Imperial County, however.

6. The Proposed Project involves implementation of agricultural water conservation measures only. Under the terms of the QSA, IID would retain the ability to divert in excess of 2.6 MAFY for agricultural, industrial, and domestic use within the current IID water service area. In addition, at the end of the initial 45-year term, the IID/SDCWA transfer agreement potentially allows IID to reclaim up to 34,000 AFY of transfer water for municipal and industrial (M&I) use within the Imperial Valley. This amount is twice the expected growth in M&I use within the IID water service area over the next 45 years. Therefore, the Proposed Project can be implemented without compromising the Imperial Valley's urban water supply. IID would continue to make water deliveries reasonably required for M&I beneficial uses, including current use and expected growth in these sectors.
7. Your comment is noted. IID recognizes that a conflict exists between Water Code Section 1011 as currently codified and the use of permanent land fallowing as a source of conserved water. IID does not and has not in the past assumed "that non-temporary (i.e., permanent) fallowing can become part of the purpose of the IA and part of the project of the QSA, without addressing the provisions of Section 1011." Should IID ever wish to include permanent land fallowing as a source for any portion of the conserved water to be transferred under the QSA, IID recognizes that legislative action would be needed to address the conflict with Water Code Section 1011.
8. This comment is noted. The parties recognize that should a long-term fallowing program eventually be included in the QSA, any potential inconsistencies with Water Code Section 1011 will have to be addressed prior to implementation.
9. The sources of water used to mitigate fugitive dust emissions from fallowed lands will come from irrigation return flows, drain, or other unused water. In regard to the potential impact of fugitive dust emissions from exposed shorelines of the Salton Sea, please refer to the response to EPA comment no. 27.
10. In general, see response to CDFG comment 42, which discusses the relationship of the QSA to SDCWA's water management plan and future supply/demand relationships.

The no-project alternative analysis in section 5.4 of the PEIR does recognize a “loss” of 590,000 AFY in normal year historic diversions of Colorado River water. However, the analysis goes on to state under the no-project scenario, MWD and SDCWA would evaluate other water management actions such as desalination, recycling, and conservation to meet water demands. These actions are further described in sections 6.2.3.2 (MWD) and 6.2.4.2 (SDCWA) of the QSA PEIR. These actions are found to be sufficient to meet projected water demands.

Further, even if it were assumed that water demands would not be met under the no-project scenario, the no-project scenario is not the appropriate baseline for analyzing the impacts of the potential growth-inducing impacts of the QSA (CEQA Guidelines Section 15126.6(e)(1)). The QSA PEIR used existing water supplies at the time the NOP was published in 2000 as the baseline. Therefore, the QSA’s maintenance of historic reliability of Colorado River water supplies was determined to not be growth-inducing.

Also, the comment states that the QSA will change the places of use and purposes of use of Colorado River water supplies. This statement is not correct with regard to the SDCWA service area, where the comment argues that growth-inducing impacts would occur. Places and purposes of use of water supplies would remain unchanged within the SDCWA service area; the QSA changes only the seniority of the supplies.

Regarding SB 610, and SB 221, these new laws require water supply assessments and verifications for certain large development projects. However, the QSA would not change San Diego area local government findings on water supplies under these laws. MWD has sufficient supplies to meet demands within the entire MWD service area even if some planned water projects (such as those called for by the QSA) are slowed in implementation, and SCDWA in the absence of the QSA has alternative ways to meet demands.

11. The QSA PEIR provides an adequate level of analysis under CEQA. Section 3.13 addresses impacts to employment and business output, as well as impacts to population and housing from the Proposed Project. The IA EIS and IID Water Conservation and Transfer Project EIR/EIS both must comply with NEPA, which has different requirements than CEQA. State CEQA Guidelines, Section 15131 states:

Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

Under NEPA, economic or social effects are not intended by themselves to require the preparation of an EIS. However, when an EIS is prepared, the economic and social effects must be discussed if they are interrelated to the natural or physical environmental effects (Code of Federal Regulations [CFR] sec. 1508.14). “Effects” are also defined as including economic and social factors (CFR sec. 1508.8). NEPA’s requirement to consider socioeconomic impacts is somewhat broader than CEQA’s, and

federal agencies typically include more economic and social information in EISs than state or local agencies include in EIRs.

The QSA PEIR analyzes impacts at a program level and is intended to identify the maximum environmental impacts that could result from implementing the IID Water Conservation and Transfer Project. As appropriate, more specific details are described in the project-specific analysis contained in the IID Water Conservation and Transfer Project EIR/EIS, but impacts and mitigation measures are similar to those described in the QSA PEIR.

12. Refer to response no. 1.



County of San Diego

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March 5, 2002

QSA PEIR
Science Applications International Corporation
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COACHELLA VALLEY WATER DISTRICT, IMPERIAL IRRIGATION DISTRICT,
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, AND SAN
DIEGO COUNTY WATER AUTHORITY - DRAFT PROGRAM ENVIRONMENTAL
IMPACT REPORT FOR THE IMPLEMENTATION OF THE COLORADO RIVER
QUANTIFICATION SETTLEMENT AGREEMENT

We have reviewed the above document dated January 2002, which was prepared by Science Applications International Corporation. Our comments on the traffic impact section are as follows:

- Language should be included in the EIR which requires that the County of San Diego (County) be notified if, and when, traffic will be temporarily re-routed onto county roads due to the project. For example: If State Route 78 is temporarily closed due to the project and traffic is rerouted onto County maintained roads, the County should be notified. | 1
- The EIR should list mitigation measures for impacts resulting from traffic being temporarily re-routed onto County roads due to the project. | 2
- The EIR should list permits required by Caltrans should traffic be rerouted from State to County Roads (i.e. encroachment permits etc.). | 3

If you have any questions concerning our comments, please contact Tom Duffy at (858) 874-4039.

Sincerely,

Kaylene Fleming
Environmental Services
KPF:TFD

County of San Diego, March 5, 2002

1. No new construction would occur in San Diego County, nor would any other actions occur that would require temporary re-routing of traffic onto county roads as a result of the QSA (refer to sections 2.5.4 and 3.12.2.3, *San Diego County Water Authority*).
2. Please see response no. 1.
3. Please see response no. 1.

INDIAN TRIBES

Comments and Responses

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PLEASE REPLY TO THE
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Via Facsimile - (805) 966-3318

March 26, 2002

Attention: Rob Thomson
 QSA PEIR
 Science Applications International Corporation
 816 State Street, Suite 500
 Santa Barbara, California 93101

Re: Comments on Draft PEIR for Implementation of Colorado River Quantification Settlement Agreement (QSA)

Dear Mr. Thomson:

We are submitting these comments on the above PEIR on behalf of the Quechan Indian Tribe, whose Fort Yuma Reservation is located in southwestern Arizona and southern California near Yuma, Arizona. The Tribe possesses present perfected rights ("PPR") from the mainstem of the Colorado River pursuant to the Decree and supplemental Decrees (1979 and 1984). The amounts, priority dates, and state where the rights are perfected are as follows:

Amount (AFY)	Acreage	Priority Date	State
51,616	7,743	Jan. 9, 1884	California

This water is diverted at Imperial Dam through the Yuma Project Reservation Division - Indian Unit. A Supreme Court decision issued on June 19, 2000 allows the Tribe to proceed with litigation to claim rights to an additional 9,000 acres of irrigable lands. Proving this claim would increase the water rights for the reservation.

The Tribe has the following specific comments on the PEIR:

1. **Impact on Water Flow and the Quechan Tribe's Senior Water Rights.** How will the project affect the Quechan Tribe's perfected and unperfected water rights? Are there any indirect effects? Impacts on senior water user's perfected and unperfected water rights are not even included in the "Significance Criteria." PEIR at § 3.1.2. The PEIR does not address this issue. This project and the many other projects affecting the lower Colorado River should not interfere in any way with the Tribe's right to use all of its PPR and to its potential rights to an additional 9,000 acres of irrigable lands.

Rob Thomson
March 26, 2002
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- What will be the reduced flow between Laguna and Morelos dams? Finally, what is the reduced flow between these two dams due to the cumulative impact of the many projects affecting the lower Colorado River? | 2
- Will the project alone, or with the other projects affecting the lower Colorado River, facilitate others' use of surplus water, which is the Tribe's unused entitlements? | 3
2. **Impact on Water Salinity.** How much will the project cause a salinity rise in the stretch between Laguna and Morelos dams? Will the increased salinity impact the quality of water taken by the Tribe? Finally, what is the cumulative salinity increase between these two dams of the many projects affecting the lower Colorado River? | 4
3. **Impact on Ground water.** Will the project cause a reduction in ground water, or in ground water levels, underlying the Fort Yuma Reservation? What is the cumulative reduction in or lowering of ground water underlying the Fort Yuma Reservation due to the many projects affecting the lower Colorado River? | 5
4. **Impact on Electricity Supply.** Will the Fort Yuma Reservation experience a reduced electricity supply due to 1) the project, or 2) the cumulative impact of all of the projects affecting the lower Colorado River? Will there be a sufficient supply to accommodate the Tribe's future plans for development? | 6
5. **Impact on Agricultural Uses.** How exactly will the Tribe's and its members' agricultural uses be affected 1) by the project, or 2) by this and the many projects affecting the lower Colorado River? | 7
6. **Impact on Cultural Resources.** The Tribe wants to be consulted about how ongoing actions in the lower Colorado River are impacting cultural resources affiliated with the Tribe. How exactly will cultural resources affiliated with the Quechan Tribe be affected by this project? | 8
7. **Cumulative Impacts - Projects Considered.** The PEIR's cumulative impacts analysis omits many projects and actions that directly affect the lower Colorado River. This was revealed by checking the PEIR's list against the two other environmental analyses listed in no. 8 below. The omissions include, but are not limited to: 1) the Glamis mine; 2) the IID/San Diego County Water Authority Water Transfer Project; 3) BOR's consumptive use policy; 4) BOR's Northern & Eastern Colorado Desert Coordinated Management Plan; 5) the International Agreement for Water Deliveries to Mexico; 6) operating criteria for Colorado River Reservoirs; 7) All American Canal lining; 8) Coachella Canal lining; and 9) rule for off-stream storage. | 9

Rob Thomson
March 26, 2002
Page 3

8. **Compliance with CEQA.** Please explain why the federal and California governments have published three related NEPA/CEQA documents, rather than combining them into one readable document? The documents are: 1) this PEIR, 2) the Bureau of Reclamation's DEIS for the Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions, and 3) the Bureau of Reclamation's and Imperial Irrigation District's Draft EIS/EIR and Habitat Conservation Plan for IID's Water Conservation and Transfer Project? This approach violates both NEPA and CEQA, which prohibit piecemealing projects and analyses that are closely related, and which require combined federal/state environmental documents for such projects. 10

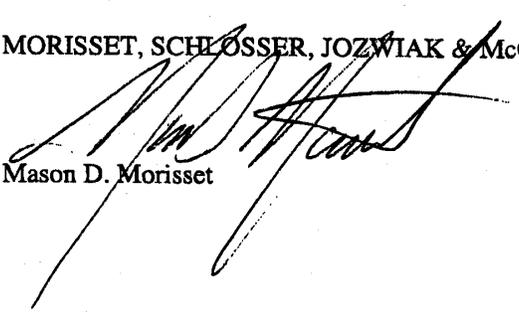
9. **The QSA.** How exactly do sections 2.1(2), 2.2(2), and 2.3(2) of the QSA protect the Quechan Tribe's senior rights to its PPRs and its potential senior water rights to an additional 9,000 acres of irrigable land? How does the same question apply to the entire QSA? The QSA does not seem to protect the Tribe's potential rights to 9000 irrigable acres, because it only covers "present perfected" rights. 11

Please state, if true, that the QSA, Implementation Agreement and IID Transfer Agreements, together and separately, do not and will not interfere with these perfected and unperfected water rights held by the Quechan Tribe, at any point during the agreements' respective durations. This provision should be added to the QSA. 12

Thank you for your consideration. The Tribe urges your respective offices to carefully consider these comments, and to respond in a detailed, readable manner, given the 75-year, irreversible nature of this project and the many other projects affecting the lower Colorado River.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW


Mason D. Morisset

cc: Mike Jackson Sr., President
Quechan Indian Tribe

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**Morrisett, Schlosser, Jozwiak, & McGaw, on behalf of the Quechan Indian Tribe,
March 26, 2002**

1. The Quechan Tribe is entitled to use its full entitlement for reasonable beneficial use within the boundaries of its reservation, and the Proposed Project would not affect the Tribe's senior water right to use all of its PPR, including any additional rights granted in a supplemental decree. If the United States Supreme Court in *Arizona v. California* upholds the Tribe's claim to additional land and enters a supplemental decree to set forth that claimed right, the priority date of the right in the supplemental decree will be established by the court. If the court follows the criteria it used for its supplemental decree entered October 10, 2000, the priority date will be the same as the Tribe's original Federal reserved right PPR (January 9, 1884). Also refer to the responses to comments 11 and 12 below.

2. The Proposed Project would not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. As noted in section 3.1.2.3, impacts would be limited to the stretch between Parker and Imperial dams. Refer to response to EPA comment 16.

A surplus determination on the Colorado River is made based on many factors, including inflow to the system, assumed delivery of 7.5 MAF to the lower Basin States, necessary reservoir storage for efficient power generation, reservoir space needed to protect flood control, and other operational constraints. Given these inputs and constraints, reservoir elevations are projected. Balancing the need for efficient power generation and the need for flood control space, a surplus determination is made and water released by the Secretary to entitlement holders in accordance with the Law of the River, the Secretary's authority, and established priority system.

To the extent that the Tribe does not use its entitlement, the unused portion remains Colorado River System water and could be released as surplus water in that year. However, the QSA does not change the Tribe's entitlement or its ability to request or use surplus water, when available, for beneficial use.

3. The Project described in this PEIR would quantify some California entitlements and transfer water and would reduce California's dependence on surplus water. As agricultural water within the State of California is conserved and transferred to other users within California, their dependence on surplus water is reduced.

4. The Proposed Project would not impact the normal flow regimes in the portion of the Colorado River system below Imperial Dam. In the stretch between Laguna and Morelos dams, the salinity increase is not expected to be any greater than that expected at Imperial Dam, 8 mg/L in the year 2076. The tendency of the water transfers to increase salinity would be more than compensated for by other actions included in the cumulative impact analysis. This analysis indicates that in the future, with the Proposed Project and other actions (outside of the Salinity Control Program), salinity at Imperial Dam (and thus Laguna and Morelos dams) would decrease by as much as 10 mg/L. For more information refer to Appendix D.

5. The groundwater level under the Fort Yuma Reservation would not change as a result of the Proposed Project. The modeled conditions that were analyzed in this PEIR would not impact the normal flow regimes in the portion of the Colorado River system below

- Imperial Dam, which includes the Yuma, Laguna, and Limitrophe divisions of the River. Thus, no impact to groundwater hydrologically connected to this reach of the River would occur.
6. Per discussions with the U.S. Bureau of Reclamation, it is the co-lead agencies' understanding that the Fort Yuma Indian Reservation does not receive energy from any of the hydro-dams below Parker Dam or any Parker Davis-Project preference power. Therefore, the QSA would have no impact on their current or future energy production.
 7. As discussed on page 3.5-10, lines 9-16, agricultural land along the lower Colorado River would not be directly affected by the Proposed Project. As noted in section 3.2.3, "If existing farmland is used to develop habitat, there may also be a significant unavoidable impact of loss of agricultural resources since these areas would be removed from production for the foreseeable future." The precise location of the areas to be developed as habitat is not known at this time; thus, the exact impact to the Quechan Tribe cannot be identified. Use of tribal land for habitat development would be subject to tribal approval, however, and an appropriate level of environmental analysis will be conducted once sites are selected.
 8. At this time, no impacts have been identified as potentially occurring to cultural resources affiliated with the Quechan Indian Tribe. Once site-specific locations have been identified for implementing biological mitigation measures, additional cultural resource surveys will be conducted to determine what, if any, cultural resources would be impacted by any on-the-ground activities that would occur. The procedures outlined in section 3.8.3 of this PEIR would be followed.
 9. The IID Water Conservation and Transfer Project, the All American Canal Lining Project, and the Coachella Canal Lining Project are all a part of the Proposed Project. Their impacts were therefore addressed as project impacts, not cumulative impacts. The Rule for Off Stream Storage was addressed as a cumulative project. Prior to the identification of the projects to be addressed in the cumulative impact analysis for the PEIR, projects were screened to determine which projects would result in a potentially significant impact when combined with the Proposed Project. The other projects addressed in this comment were considered, but screened out from the cumulative impact analysis since there was not a potential for a cumulative impact. For example, the water deliveries to Mexico would not be affected by the Proposed Project since all changes in diversions would be in California only (refer to Chapter 2 of the PEIR).
 10. Three environmental documents were prepared to address impacts at different levels of detail, consistent with the level of detail of the proposed action or project. Each document will support different decisions by different lead agencies, and is tailored to match the particular decisions being made. The interrelationships of the three documents and other related projects are explained fully in section 1.5 of the PEIR.
 11. The Quechan Tribe is entitled to use its full entitlement for reasonable beneficial use within the boundaries of its reservation. Sections 2.1(2), 2.2(2), and 2.3 (2) of the QSA (or sections B.3.f., B.4.d., and B.5.c. of the IA) were not drafted to address the rights of the Quechan Tribe or other Tribes, nor do they impact such rights. Those provisions prorate the individual forbearance in consumptive use by IID, CVWD, and MWD when California water districts are required to reduce use to prevent California's consumptive

use from exceeding the amount of Colorado River water available to California that year. For scheduling purposes only, the California water districts will assume that water use by the higher priority California water users, such as the Quechan Tribe, will be the same as their historic average use. This scheduling presumption is made only so the districts can schedule their water use with more certainty; it does not restrict the rights of the Quechan or other Tribes. If the Tribes' use exceeds the amount of water the water districts projected, then IID, CVWD, and MWD will need to forbear some of their consumptive use to keep California's consumptive use from exceeding the amount that is available to California. The QSA is the agreement among IID, CVWD, and MWD as to how a required reduction will be prorated among them.

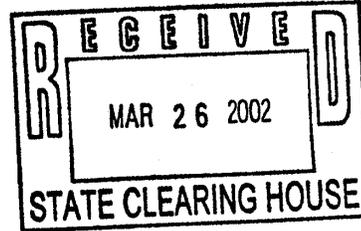
12. Neither the QSA, IA, nor the IID/SCDWA Transfer Agreement would interfere with the federal reserved right PPRs or with additional PPR rights that may be granted to the Tribes in future supplemental decrees. Also see response to comment no. 1 above.

Scr # 2000061034 2

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March 26, 2002



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Re: Quantification Settlement Agreement Draft Program Environmental Impact Report

Dear Mr. Morgan:

Please accept the following comments on the Draft Program Environmental Impact Report ("DEIR") for the Implementation of the Colorado River Water Quantification Settlement Agreement. These comments are submitted on behalf of the Torres Martinez Band of Desert Cahuilla Indians ("Tribe"). The Tribe owns and enjoys the full use and benefit of the Torres Martinez Reservation ("Reservation"), which is located on the northwest side of the Salton Sea. The Tribe also possesses a considerable amount of land that has been inundated by inflows of Colorado River water into the Salton Sea. The implementation of the Quantification Settlement Agreement will have direct impacts on the land and water assets of the Tribe, several of which are not properly considered by the DEIR.

Salton Sea

Of greatest concern to the Tribe are impacts to the Salton Sea from reduced inflows caused by the lining of the Coachella Canal and the reduction of inflows from the Imperial Irrigation District ("IID"). The DEIR fails to provide an adequate analysis of the potential reduction in the level of the Salton Sea, leaving the Tribe in a state of uncertainty about the future of one of its most precious resources.

The DEIR clearly acknowledges that the decline in the level of the Salton Sea will be accelerated by the water management changes anticipated under the Quantification Settlement Agreement. It does not, however, adequately acknowledge the dramatic impacts the lowering of the Salton Sea will have specifically on the Tribe and other local communities.

1
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The DEIR admits the Salton Sea will shrink faster under all potential scenarios, from a minimal conservation effort within IID to a reduction of 300,000 acre-feet a year of inflows, potentially reducing the Sea's elevation to -250 feet and increasing salinity levels to 140,000 mg/l within 75 years. This acceleration of the lowering of the Salton Sea will increase salinity levels and catalyze the decline in sports fisheries, non-sport fisheries, and bird populations, destroying future recreational and economic development opportunities.

1

The DEIR recognizes that the salinity of the Salton Sea will increase due to the decrease in IID's discharge to the Sea. The DEIR states in table 3.1-21 that the increase in salinity levels will not be a significant impact to the hydrology of the Salton Sea because there are no water quality criteria for salinity in the Sea. Regardless of whether there are water quality criteria, the increase in salinity and the ensuing decline in recreational opportunities and the accelerated die off of fish and bird populations will be a significant impact and should be addressed in detail.

The DEIR concludes that increased levels of selenium and total dissolved solids will unavoidably impact the Salton Sea. No mitigation measures for these impacts are contemplated by the DEIR. In addition, the DEIR recognizes that significant impacts will occur in the lower groundwater aquifer due to increased levels of total dissolved solids. The DEIR states that no feasible mitigation measures have been identified for this hydrologic impact. Mitigation measures for these significant impacts should be developed prior to implementation of the Quantification Settlement Agreement.

2

As the level of the Salton Sea lowers, the agricultural drains that enter the Sea on Tribal lands will have a longer path to travel to reach the Sea. The DEIR contemplates that this will create increased riparian and wetland habitat. The DEIR should also consider the likelihood that the waters traveling towards the Sea will have higher concentrations of contaminated sediments and will be subject to increased evaporation and evapotranspiration before reaching the Sea, further impacting the level of the Sea.

3

The DEIR fails to adequately consider the impacts to the over 400 bird species, 27 mammal species, and five reptile and amphibian species that rely on the Salton Sea from the accelerated lowering of the Salton Sea and accompanied increase in salinity and pollutant levels. These fish and wildlife populations include 58 species classified by the U.S. federal government as sensitive. Most significantly 25 to 40% of the Yuma clapper rail U.S. population, half of the California population of snowy plover, 80 to 90% of the entire population of American white pelicans, and the second largest population of wintering white-faced ibis utilize the Salton Sea.

4

The Tribe commends the lead agencies for including discussion of the mitigation strategies for reductions in fish populations expected from the acceleration of the salinity levels in the Salton Sea. The Tribe encourages the IID to continue consultation with the Fish and Wildlife Service and the California Department of Fish and Game. The Tribe

5

also encourages the IID to include the Tribe and the Salton Sea Authority in its consultations on this issue.

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5

The conclusion that increased odors due to premature death of fish and wildlife in conjunction with increased algae blooms on the Salton Sea will not be a significant impact because there are not a substantial number of people around the Sea is not shared by the Tribe. The northwest portion of the Salton Sea is the permanent homeland of the Tribe and impacts from increased odors will cause significant disturbance to the Tribe and has the potential to affect future Tribal economic developments.

6

The Tribe requests that its jurisdiction and ability to implement land use planning on the northwest portion of the Salton Sea be acknowledged in section 3.4.1.7.

7

Groundwater

Groundwater is also of vital concern to the Tribe. It has historically been the sole source of meaningful water supply and is perhaps the most valuable Tribal resource. Unfortunately, the DEIR fails to provide adequate data, analysis, or even an honest discussion about the current incapacity to make meaningful forecasts about future groundwater quality and levels underlying the Reservation that will be directly affected by the proposed actions.

8

More specifically, there is a lack of analysis in the DEIR as to the effects on groundwater quality and a lack of consistency in the DEIR as to whether groundwater levels will increase or decrease with the change in water management contemplated by the Quantification Settlement Agreement. While the DEIR discusses changes in quantities of imported water, impacts from the lining of the Coachella Canal, and increased groundwater recharge efforts in the Coachella Valley, it fails to adequately analyze two substantial and potentially critical negative effects.

First, the effects of recharging the high-quality aquifer with much lower quality Colorado River water must be thoroughly assessed. Although increased groundwater recharge efforts may have a positive impact on the quantities of water contained in the Coachella Valley aquifers, such recharge activities may also significantly impair the quality of the receiving groundwater and with it, the Tribe's water supplies. It cannot be assumed that aquifer recharge by itself is a positive environmental or resource management action.

For example, Colorado River water has been analyzed and identified by the U.S. EPA as containing dangerous levels of perchlorate.¹ The Coachella Valley Water District has proposed building a groundwater recharge facility within one mile and up-gradient from the Tribe's main domestic drinking water well. That facility would recharge the Coachella aquifer with Colorado River water, yet the DEIR contains no analysis or recommended mitigations related to these likely environmental impacts.

¹ Perchlorate levels of the Colorado River at Lake Havasu have been measured at ranges between 8 and 10 ppb. On January 18, 2002 the California Department of Health Services set drinking water standards for perchlorate at 4 ppb.

A second major concern revolves around the structural effects to the Coachella Valley aquifers resulting from the lining of the Coachella Canal and the conservation of agricultural water in the IID. It is likely that those efforts will result in a decrease of water that otherwise would recharge groundwater resources. The DEIR does not reconcile the countervailing results of these actions.

It is misleading to point to structural benefits for the Coachella aquifer when there is no presently legally enforceable commitment from the parties involved in the water transfer to provide more water to the Coachella Valley Water District, or for the Coachella Valley Water District to commit that water to a recharge project. Under the terms of that proposed agreement, the Coachella Valley Water District must develop a Water Management Plan and complete the attendant environmental review and permitting processes. To date, the Tribe is not aware of nor has it seen a copy of even a Draft Environmental Impact Statement/Report related to the Water Management Plan.

Thus, it is puzzling to the Tribe how the DEIR can claim to adequately analyze the environmental effects and cumulative impacts of the Quantification Settlement Agreement and attendant policies when those activities are inextricable from the Coachella Valley Water Management Plan, the Salton Sea Restoration and other projects and their environmental reviews when those analyses have not been completed.

Also lacking in the DEIR is discussion of the anticipated changes to the confluence of Salton Sea water with fresh waters underlying the Reservation. Increases in salinity levels will have effects underground as well as above. Destruction of the groundwater resources of the Tribe through the intrusion of highly saline water could effectively render the Reservation valueless unless the Tribe is then provided with substantial quantities of fresh water. Of course, that scenario is contrary to the overall intent of the Implementation Agreement to reduce the reliance of southern California on Colorado River water.

Irrigation and Drainage Systems

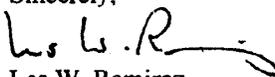
Section 2.5.2 of the DEIR discusses the potential for expansion of the Coachella Valley Water District ("CVWD") distribution and drainage system. Therein the DEIR states that the exact location of these potential distribution and drainage facilities is not known at this stage of plan development. The Tribe reminds the CVWD that all Reservation lands listed within the schedule for CVWD's Irrigation District No. 1 have yet to be served by irrigation and drainage works and encourages CVWD to complete its responsibilities on the listed Reservation lands.

Access to Tribal Lands

The statement in section 3.8.3 that IID shall conduct paleontological and archacological surveys in newly exposed areas of the Salton Sea shoreline should acknowledge the requirement that express tribal permission must be obtained before any entry onto Tribal lands.

Thank you for considering these comments. Please do not hesitate to contact me to discuss these issues in greater detail.

Sincerely,



Les W. Ramirez
Special Counsel for Water Resources &
Environmental Affairs

**Les Ramirez, on behalf of the Torres Martinez Band of Desert Cahuilla Indians,
March 26, 2002**

1. Lining the Coachella Canal would not affect inflows to the Salton Sea. There is no subsurface connection between the canal and the Salton Sea, and surface flows to the Salton Sea, via Salt Creek, would be maintained. Impacts of the Proposed Project on the Salton Sea and, where appropriate, surrounding communities (which include the Torres Martinez Indian Reservation) are addressed under each resource in Chapter 3 of the PEIR, and include recreational impacts, biological impacts, economic impacts, aesthetic impacts, and impacts to cultural resources. As appropriate, additional details are provided in the IID Water Conservation and Transfer Project EIR/EIS.
2. Please refer to the response to Environmental Protection Agency (EPA) comment no. 18.
3. With implementation of proposed conservation measures in the IID service area, both the volume and concentration of silt in the Alamo and New rivers and Salton Sea will decrease. Because pesticides, herbicides, and nutrients tend to concentrate in sediments, this decrease in silt is expected to lead to a decrease in pesticide, herbicide, and nutrient concentration and load in the Alamo and New rivers and the Salton Sea. Additionally, the gradient at the north end of the Sea (near the Torres Martinez Indian Reservation) is considerably steeper than at the south end, so the impact would be less pronounced for the worst-case analysis in the south. With implementation of the Coachella Valley Water Management Plan, drainage from this service area could increase. However, the increase in drainage from this service area, and its associated silt, pesticide, herbicide, and nutrient concentrations would be considerably less than the decrease in silt arriving at the Sea from the IID service area. With the implementation of all QSA components, it is anticipated that the Salton Sea would receive less contaminated sediments than it does at present.
4. Section 3.2 of the PEIR fully considers the potential impacts of the Proposed Project on the wildlife species described in the comment. These include impacts to general biological resources, as well as impacts to sensitive species. It must be noted that the PEIR addresses the impacts of the Proposed Project, which are associated with the acceleration of the increasing salinity of the Sea. Measures have been identified to reduce the biological impacts of the Proposed Project to less than significant levels.

The impacts to the Yuma clapper rail associated with the implementation of the Proposed Project would be less than significant since the habitat for the species is located in the managed marshes of the wildlife refuges and would not be affected by changes in the Salton Sea.

The impacts to the snowy plover and the other species were also addressed in the PEIR, section 3.2.2.3.
5. The co-lead agencies agree with this comment and will continue to discuss strategies for mitigating impacts to the Salton Sea with the Torres Martinez Indian Tribe.
6. Additional detail regarding potential impacts associated with odorous emissions at the Salton Sea has been added to section 3.7.2.3 of the Final PEIR. However, the finding of significance has not changed and odor impacts are still considered to be less than significant.

7. This information has been added to section 3.4.1.7.
8. As noted in the PEIR (section 3.1.2.3), groundwater levels in the Coachella Valley generally would increase as a result of the Proposed Project. Water levels in the Oasis area, which is near the Torres Martinez Indian Reservation and representative of conditions there, are expected to be about 75 feet higher in 2035 than they were in 1999 given implementation of the Proposed Project (CVWD 2000).

The PEIR is not inconsistent regarding whether groundwater levels would increase or decrease upon implementation of the QSA. Rather, the document indicates that the QSA components would have varying effects on groundwater levels depending on the location involved. For example, as noted in section 3.1.2.3, groundwater levels would decline in the East Mesa area as a result of All American Canal Lining Project, and the QSA would result in an overall decrease in the IID service area. Lining the Coachella Canal would result in a reduction in groundwater near the newly lined section of the canal; however, the QSA would result in an overall beneficial impact to groundwater levels in the CVWD service area.

The PEIR recognizes that while the impact of recharge on groundwater levels in the CVWD service area would be beneficial, the impact on groundwater quality in certain parts of the Coachella Valley groundwater basin is anticipated to be significant because of the higher concentrations of TDS and other chemical constituents in Colorado River water than some local groundwater. Wells located up to 2 to 3 miles downgradient of the proposed CVWD recharge sites are most likely to experience elevated TDS as a result of the Proposed Project. Groundwater quality near the recharge basins would gradually change over time and may approach the quality of Colorado River water in the affected areas.

Please refer to EPA response no. 17 regarding selenium TMDLs. As noted in that response, it is the co-lead agencies' view that it is only practical to carry out mitigation for selenium within the context of a more extensive mitigation effort.

Since the TDS of the local groundwater in portions of the basin is higher than Colorado River water, the magnitude of the water quality change would vary with location. The anticipated TDS increase would not impair any beneficial uses of the water, as defined by established state and federal primary (or health-based) drinking water standards. The higher salinity could exceed recommended secondary water quality standards that deal with aesthetics, such as taste and hardness. Mitigation to reduce the higher TDS concentrations of Colorado River water to the equivalent of groundwater was evaluated and found to be financially and environmentally infeasible, as discussed below.

CVWD evaluated the feasibility of reducing the higher TDS of Colorado River water to the equivalent quality of groundwater. Two alternatives were considered: (1) construction of an extension of the State Water Project (SWP) into the Coachella Valley and (2) construction of desalination facilities for Colorado River water. The capital cost of extending the SWP to the valley ranged from \$205 million to \$390 million depending on the size of the facility. Total costs (including capital and operations) would range from \$322 to \$406 per acre-foot, in addition to the cost of acquiring SWP water (about \$200 per acre-foot). The capital cost of desalting Colorado River water ranged from \$284 million to \$1.19 billion depending on the size of the facilities and the method of brine

disposal. The highest cost identified involved treating all Colorado River water entering the Coachella Valley. The cost of the desalted water ranged from \$184 to \$330 per acre-foot, in addition to the costs of acquiring the water supplies and delivering them to customers in the valley. On the basis of economics alone, these options were found to be economically infeasible (CVWD unpublished data).

In addition to the economic considerations, each of these options has significant environmental impacts of its own. Environmental impacts include the disturbance of 300 to 400 acres of desert land for pipeline construction, loss of 500 to 3,500 acres of land for brine evaporation ponds, loss of habitat and biological resources, loss of cultural resources along facility alignments, air quality impacts from construction and generation of additional energy for the pump and treatment facilities, additional energy for pumping SWP water or running the desalters, and impacts related to salt disposal (CVWD unpublished data). Considering both costs and environmental impacts, these mitigation measures are considered infeasible.

Perchlorate enters the Colorado River water system along Las Vegas Wash, which drains into Lake Mead. Perchlorate concentrations decrease as Colorado River water flows downriver, because of other incoming flows. Water from MWD's Colorado River Aqueduct had perchlorate concentrations ranging from 4 to 8 ppb between 1997 and 2001. IID reports perchlorate concentrations in the All American Canal of 4.2 to 5.3 ppb during 2001-2002. The CVWD water samples found no perchlorate in water from the Coachella Canal (the detection limit is 4 ppb). In 2001, CVWD tested all its active wells in May and in October/November. Only one well near Avenue 54 and Jefferson had detectable perchlorate (5.0 and 5.9 ppb from two different laboratories).

At the same time, the Nevada company responsible for the perchlorate entering Las Vegas Wash constructed and is operating a perchlorate treatment system. The treatment processes are anticipated to decrease perchlorate concentrations in Las Vegas Wash, and thus in the Colorado River water, significantly over the next approximately 6 years. The date cannot be predicted exactly as the concentration is also a function of flow in the river, which is dependent on rainfall, and there is perchlorate already in the Las Vegas Wash sediments that will be flushed out over time at a rate that also depends on rain events. By the time the Dike 4 area recharge basin goes on line, in roughly 2005, the perchlorate level in the Colorado River water from the Coachella Canal will be lower than at present.

In addition, CVWD groundwater modeling estimates that the recharge at Dike 4 will take approximately 10 to 20 years to reach the Torres Martinez wells.

A mitigation measure has been added to section 3.1.3 that would reduce any potential impacts to the Torres Martinez drinking water supply from the significant groundwater impact.

9. The impacts of lining the Coachella Canal have been addressed and mitigated in a separate EIS/EIR for that project. The lining of the canal would have no effect on the Coachella Valley aquifers as the area to be lined does not overlie these aquifers. Conservation of agricultural water in the IID service area would have no impact on Coachella Valley aquifers, as IID irrigation drainage does not have any connection to Coachella Valley aquifers.

10. There is no legally enforceable commitment for any of the agencies until the QSA itself is signed, which cannot occur until after certification of the QSA PEIR. The PEIR evaluates the effects of a group of proposed related actions by several agencies. CVWD would receive no water until this and other agreements, approvals, and permits were in place (such as the Secretary of the Interior execution of the Implementation Agreement, U.S Bureau of Reclamation approval to convey non-Federal water in the Coachella Canal, air quality permits, California and federal Endangered Species Act compliance, National Pollutant Elimination System Discharge permit, Streambed Alteration Agreement, water transfer and exchange agreements with MWD, and Caltrans encroachment permits).

Analysis of cumulative impacts under CEQA does not require that the environmental review of the related project be in a completed document. The best available information on these projects, including the Coachella Valley Water Management Plan, has been made available to the preparers of the PEIR. The Water Management Plan was published in November 2000 and a copy made available to the Tribe.
11. CVWD groundwater modeling predicts that the intrusion of Salton Sea water into adjacent Coachella Valley aquifers will occur unless the Coachella Valley basin is recharged and groundwater overdraft addressed. The Coachella Valley aquifer adjacent to the Sea is currently as low as 227 feet below mean sea level. If groundwater overdraft continues to lower the aquifer (below the elevation of the Salton Sea), seawater intrusion will continue. Although the overall intent of the QSA is to reduce California's reliance on Colorado River water, the QSA provides additional water supplies to the Coachella Valley. CVWD is proposing groundwater recharge and other planned components under the Coachella Valley Water Management Plan to reduce overdraft in the Coachella Valley. The risk of Salton Sea intrusion would be substantially reduced if not eliminated with the QSA and the Water Management Plan.
12. This is not a comment on the Draft PEIR; thus, no response is required.
13. This change has been made to the mitigation measure.

ORGANIZATIONS

Comments and Responses

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March 20, 2002

QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

To whom it concerns:

Defenders of Wildlife, National Audubon - California, and the Planning and Conservation League respectfully request that the Coachella Valley Water District, Imperial Irrigation District, Metropolitan Water District, and San Diego County Water Authority extend the deadline for comment on the QSA PEIR to April 26, 2002. By separate letter, Defenders has requested that the Bureau of Reclamation extend the deadline for comment on its DEIS for the Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP), and Related Federal Actions to April 26, 2002. This is the same day as the deadline for comments on the DEIS/EIR for the IID Water Conservation and Transfer Project. 1

Setting a common deadline for these three environmental documents will greatly simplify the public's task in commenting, result in improved public input, and thereby simplify the agencies' responsibility to respond to comments. The QSA PEIR acknowledges the extent to which these actions are connected. For example, "[e]xecution of the IA would commit the Secretary to making Colorado River water deliveries in accordance with the terms and conditions of the IA to enable the implementation of the QSA." QSA PEIR, at ES-3 (emphasis added). The QSA was designed to facilitate implementation of the IID/SDCWA Water Conservation and Transfer Agreement. QSA PEIR, at ES-2. The QSA's terms require completion of both of these projects, and the QSA cannot be implemented without them as currently written. See QSA Art. 6.1, 6.2(2)(a). It is only common sense that the public can most effectively participate in the environmental reviews for these related projects if the comment periods for them are coordinated.

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Please inform us of your decision on our request at your earliest convenience by calling me at 916-313-5810 or e-mailing me at bfletcher@defenders.org.

Thank you,

Brendan Fletcher, California Program Associate
Defenders of Wildlife

for

J. William Yeates, Attorney for
National Audubon - California

Karen Douglas, Natural Resources Director
Planning and Conservation League

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Defenders of Wildlife, March 20, 2002

1. Please refer to Antonio Rossman (February 8, 2002) response no. 1.



March 26, 2002

BY FACSIMILE AND U.S. MAIL

Robert D. Thompson
QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

RECEIVED
MAR 28 2002
SAIC SANTA BARBARA

Re: Draft Program Environmental Impact Report for Implementation of the Colorado River Quantification Settlement Agreement (QSA DPEIR)

Dear Mr. Thompson:

This letter provides comments from Defenders of Wildlife, National Audubon - California, Planning and Conservation League, National Wildlife Federation, and the Pacific Institute for Studies in Development, Environment, and Security on the Draft Program Environmental Impact Report for the Quantification Settlement Agreement (QSA DPEIR) prepared for the Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), the Metropolitan Water District of Southern California (MWD), and the San Diego County Water Authority (SDCWA) (collectively, "the water agencies"). This letter supplements a separate letter prepared by National Audubon - California and signed by Defenders, Planning and Conservation League, and National Wildlife Federation.

We commend the water agencies for undertaking the difficult task of setting aside their long-standing disputes and settling upon an agreement for water allocation among themselves so that California can one day live within its basic allocation of 4.4 million acre-feet of Colorado River water. We recognize the importance to the water agencies of living within their means, and we support their goal of doing so.

But it is critical that in the effort to implement meaningful plans to reduce California's Colorado River water use, the water agencies take the time to thoroughly review the environmental impacts, weigh the alternatives, and involve the public in their decisionmaking. However laudable the purposes of the QSA, it would be unwise to rush to approve it without seriously considering whether the agreement or its component parts can be altered to avoid most environmental impacts, how mitigation can be implemented where environmental impacts cannot be avoided, and even whether the environmental costs of the agreement as it is currently structured outweigh the benefits for California.

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As we will explain throughout this letter, we are concerned that the DPEIR does not adequately provide the necessary thorough review, especially with respect to impacts on the Salton Sea. By separate letter, Defenders of Wildlife and other environmental organizations have registered their concern that the Bureau of Reclamation's Implementation Agreement and other federal actions related to the QSA will result in significant, unacceptable harm to the Lower Colorado River and its delta. We incorporate those comments where relevant, but in this letter, we will focus on the impacts the QSA will have on the environment at the Salton Sea, in the Imperial and Coachella Valleys, and in San Diego County.

The Salton Sea is a natural and recreational resource of statewide, national, even international importance. The Sea supports millions of birds during migration, and with the loss of 91 percent of California's wetlands, the Sea has become a critical stopover on the Pacific Flyway. It supports 45 percent of the entire United States population of the threatened Yuma clapper rail, 80 percent of the American white pelican, and 90 percent of the *North American* population of the eared grebe. It sustains a productive fishery that attracts 400,000 anglers every year.

Yet the DPEIR's analysis of the effects the QSA and its component projects will have on the Sea is cursory at best. The DPEIR gives little indication that QSA-related impacts could hasten the point at which the Sea will become too saline to support fish by a decade or more, with devastating impacts on the Sea's piscivorous bird populations; could so substantially reduce the surface area of the Sea that existing recreational facilities could become far less attractive at best and useless at worst; could create one of the worst, perhaps even the worst, sources of PM10 air pollution in the United States. The DPEIR gives the impression that there will be mitigation for significant impacts, when in fact, no mitigation at all has been proposed for some of the most severe impacts, some proposed mitigation measures are wholly unproven and likely inadequate, and there has been no commitment from the water agencies to fund even those unproven and inadequate measures that have been proposed. In short, the DPEIR gives no indication that, if QSA-related projects are implemented without proper avoidance and mitigation measures, California could be facing a genuine environmental catastrophe at the Salton Sea.

A Programmatic Environmental Impact Report for such a critical suite of projects needs to do more. It needs to highlight rather than minimize the impacts to such a vital resource as the Salton Sea; it needs to propose genuine mitigation plans that the agencies have the resources and commitment to carry out; it needs to provide real alternatives to the proposed action so there is a fall-back plan in the event the project, as proposed, is unworkable. In the remainder of this letter, we explain the ways in which the DPEIR fails to meet these needs. For these reasons and all that follow, we request that the water agencies revise the DPEIR and recirculate it as a second draft, so all of the consequences of the QSA and its components are clearly laid out for public consideration.

1. The DPEIR unlawfully designates all four agencies as the lead agency, reducing accountability for the project and confusing responsibility for mitigation of its impacts.

Section 15050 of the CEQA Guidelines provides that "[w]here a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing

an EIR or negative declaration for the project.” However, the DPEIR has four co-lead agencies: CVWD, IID, MWD, and SDCWA.

3

In *Planning and Conservation League v. Department of Water Resources*, 83 Cal.App.4th 892 (2000), a court of appeal found such shared responsibility among water agencies to violate CEQA. The court noted that Public Resources Code section 21067 plainly requires the public agency with principal responsibility to assume the role of lead agency, and observed that dividing lead agency responsibility among parties to an agreement creates serious problems of accountability. This problem is particularly acute with respect to the QSA, because the terms of the QSA actually limit the parties’ commitment to fund mitigation measures for QSA-related impacts. As a result, as explained in more detail in Section 4 below, the QSA DPEIR describes mitigation measures for biological impacts at the Salton Sea which the QSA parties (and SDCWA, which is not a party to the QSA but stands to benefit from it and is a co-lead agency) have expressly declined to fund. Because there is no lead agency, however, there is no single party the public may hold accountable for DPEIR’s failure to describe mitigation measures that actually stand some chance of being implemented.

2. *The DPEIR does not adequately describe the proposed project.*

4

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.) The project description provided in the DPEIR falls short of this standard in several respects.

The draft text of the QSA is nowhere to be found in the DPEIR. Although the DPEIR provides a summary of the QSA’s terms in Appendix A, which is useful and should be retained, a summary is no substitute for the actual text of the agreement.

In addition, the summary omits several critical details of the QSA, and other important aspects of its terms are missing from the project description within the body of the DPEIR. First, the summary does not fully capture the extent to which the QSA’s execution is contingent upon execution or implementation of its component parts. The QSA requires that the Bureau of Reclamation adopt the Implementation Agreement and Inadvertant Overrun Policy in substantially the same form it was proposed; it requires that the IID – San Diego water transfer complete environmental compliance and survive judicial review before the end of this year; it requires that the State Water Resources Control Board make specific findings regarding its approval of the transfer. These details are important because, as described below in Section 5, the DPEIR provides no alternative should any of these conditions not come to pass.

In addition, there is no discussion within the DPEIR of the limits on the parties’ willingness to fund mitigation that are written into the QSA, or the provisions of the IID – San Diego water transfer agreement that preclude use of replacement water for mitigation. As these provisions render impracticable the two strategies the DPEIR proposes for mitigation of biological impacts at the Salton Sea, as discussed further in Section 4 below, their omission is critical.

5

3. *The DPEIR inadequately or inaccurately describes impacts across the range of resource areas.*

6

The CEQA Guidelines provide that “significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence.” (CEQA Guidelines § 15143.) However, the DPEIR fails to recognize the significance of some serious impacts, downplays the severity of others, and provides only scanty information for those impacts that are not ignored or minimized.

a. Water Resources

The DPEIR recognizes that the proposed project would result in a decrease of inflows to the Salton Sea, but it does not even attempt to quantify this decrease and fails to recognize its significance. (DPEIR, p. 3.1-37.) However, if the IID – San Diego transfer is fully implemented through on-farm conservation methods, as much as 300,000 acre-feet of water per year will be transferred out of the Imperial Valley, reducing flows to the Salton Sea by approximately the same amount. (CITE) This reduction in inflow could be permanent. As current inflows are approximately 1.3 million acre-feet of water, this amounts to a nearly 25 percent reduction in flows to California’s largest inland water body; if inflows are reduced for other reasons, as expected, the reduction is even greater on a percentage basis. But somehow, the DPEIR finds this impact insignificant. (DPEIR, p. 3.1-38.)

7

The DPEIR’s findings regarding water quality at the Salton Sea are even more puzzling. Although the DPEIR acknowledges that QSA-related actions will increase the salinity of the Salton Sea, it finds this impact insignificant because there are no water quality criteria for salinity at the Sea. While there are provisions within CEQA intended to assist lead agencies in making significance determinations when a project has impacts that fall within existing regulatory guidelines, see CEQA Guidelines section 15064, we are unaware of any provision of CEQA that provides that a project’s impact on a water body is automatically insignificant if there are no water quality criteria for the pollutant of concern for that water body.

8

The DPEIR also recognizes that the project “would cause an increase in concentration, although not total load, of various soluble constituents in drains in the Imperial Valley and the New and Alamo rivers, which discharge into the Salton Sea,” DPEIR, p. 3.1-28, but this bland statement hardly conveys the magnitude of the impact. There are over 1200 miles of drains in Imperial County, and surely the consequences of increasing concentrations of selenium in those open drains merits more than a brief acknowledgement.

9

The DPEIR simply ignores the impacts this concentration of selenium in drain water will have on the Salton Sea. The drain water will make its way to the Sea carrying the same selenium load as previously, with less water to decrease concentrations. The degraded drain water will flow into the Sea, which will be smaller as a result of the proposed project. Unless there is some mechanism for removing selenium from the drain water, and the DPEIR does not describe any such mechanism, water quality in the Sea will be degraded.

b. Biological Resources

The DPEIR acknowledges that the project “has the potential to adversely affect biological resources” at the Salton Sea as a result of increased salinity from reduced inflows, DPEIR, p. 3.2-21, but it consistently understates the impacts. 10

Regarding the Sea’s abundant fish populations, the DPEIR finds that “[a]n acceleration of the increase in salinity of the Salton Sea will likely change the species composition of the invertebrate and fish populations and cause a decline in their general population size.” (DPEIR, p. 3.2-31.) That is putting it mildly. As the Salton Sea becomes more saline, it will become less hospitable to fish and eventually reach a point where it is too salty for fish to survive. The IID water transfer EIR/EIS projects that the Sea will be too salty for fish in approximately 20 years if the transfer and other QSA-related projects are not implemented, and in approximately 10 years if they are. (IID EIR/EIS, Figure 3.2-17.) In other words, the project will reduce the lifespan of the Sea as fish habitat by half.

However, even this is a conservative estimate of impact. A draft report of the Salton Sea Science Office projects that the Sea’s salinity would not exceed the fish-supporting threshold for more than fifty years, assuming current inflows. If these numbers are used, the project could reduce the lifespan of the Sea as fish habitat by 80 percent.

Nevertheless, “[t]his impact to fisheries (more rapid loss) is considered less-than-significant since these species are not native to the Salton Sea.” (QSA DPEIR, p. 3.2-31.) This is absurd. Although nonnative fish have different ecological value than native fish, and often compete with or prey on natives to their detriment, in the case of the Salton Sea, they provide a valuable food resource for native and even imperiled bird species and support a large recreational fishery. There are millions of fish in the Sea today. Hastening the day when there will be none, except perhaps at the deltas where inflows enter the Sea, is surely a significant impact.

The DPEIR finds that as a result of declines in fish populations, populations of fish-eating birds such as skimmers, cormorants, American white pelicans, and threatened brown pelicans may decline sooner than without the project. (DPEIR, p. 3.2-31.) Here the dynamic is as with fish. These bird species will not simply decline, they will largely disappear as their foodsource expires. The DPEIR does not explain where these birds will go or whether they have alternative habitat. 11

The DPEIR finds that the project “would not create significant impacts to populations of the Yuma clapper rail and the California black rail since their primary habitat is within the managed marshes not directly affected by the decline of in the Salton Sea.” (DPEIR, p. 3.2-31.) This is hardly as self-evident as this statement would imply. On average 25 to 40 percent of the entire U.S. population of the endangered Yuma clapper rail reside in habitat directly adjacent to the Salton Sea. The managed wetlands at the south end of the Sea could be isolated from open-water habitat by several miles as the Sea recedes. If this will not affect the remnant population of these endangered birds, it should be explained more convincingly than by unsupported 12

assertions. In addition, as the DPEIR acknowledges, the project will increase selenium concentrations in open drains, which could have an adverse impact on emergent vegetation that provides habitat for the Yuma clapper-rail, but the DPEIR does not quantify the increase in selenium concentration or analyze the degree to which it could contribute to clapper rail reproductive failure or birth deformities.

12

c. Recreational Resources/Aesthetics

The DPEIR finds that impacts on sport fishing at the Salton Sea will be significant, but the analysis obscures those impacts, much as with fisheries impacts. (DPEIR, p. 3.6-8.) The IID water transfer EIR/EIS reports that as many as 400,000 people visit the Sea annually to fish. If fish populations fail a decade earlier than would occur without the project, as projected, IID water transfer EIR/EIS, p. 3.2-31, this would result in the loss of 4 million angler days at the Salton Sea.

13

The DPEIR acknowledges that the project may have significant impacts on developed recreational facilities, but it softpedals those impacts as well. It mentions that when water levels at the Sea drop below 230 feet below sea level, facilities may need to be relocated, but it does not make clear that the project could cause the shoreline to drop below 250 feet below sea level. Since the DPEIR does not provide any quantitative information at all as to how far from the shoreline facilities will be stranded, it is impossible to know how dramatic the relocations will need to be. However, judging from the map provided in the IID transfer EIS/EIR, the boat launch at the southern end of the Sea will be miles from the shoreline, and facilities on the east and west shores, including campgrounds and boat launches, could be hundreds of yards from shoreline. (IID water transfer EIS/EIR, Figure 3.6-4.)

14

Regarding aesthetics, the DPEIR finds that the decline in the Sea's surface area caused by the project would affect the Salton Sea's scenic views, with the exposed area looking "like the existing beach; however, views of the water, considered a scenic vista, would be possible only from a much greater distance from the developed public viewing facilities at these locations. The change would be very gradual and the visual impact would not be perceptible except over a long period, but ultimately, the impact would be significant." (QSA DPEIR, p. 3.10-5.) This makes it sound like things will stay more or less the same, but with wider beaches and longer views. In fact, as the simulated views in the IID water transfer DEIR/DEIS show, from current vistas the Sea will be a thin blue line on a distant horizon, with exposed, salt-encrusted playa surfaces standing between the viewer and the shoreline and presenting an extraordinary deterrent to access. (IID DEIR/DEIS, Figures 3.11-5a through 3.11-5l.)

15

d. Air Quality

The DPEIR describes air quality impacts as follows:

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As a result [of the proposed project], the surface water elevation of the Salton Sea would decline at a faster rate and to a greater extent under the Proposed Project

than under the Future Baseline. The soils along the Salton Sea shoreline are predominantly silty clay in texture and consequently have a moderate potential for wind-blown dust. . . . the level of dust emissions from the Proposed Project would be contingent upon the amount of human disturbances that would occur on these exposed soils. Although the new shoreline created by the Proposed Project would only marginally increase the total land area within the ROI that presently generates fugitive dust emissions, fugitive dust emissions from these areas would be significant due to the PM10 nonattainment status of the region. (QSA DPEIR, p. 3.7-9.)

16

This grossly understates the project’s potential impact. The statement that the Sea’s elevation “would decline at a faster rate and to a greater extent” than without the project implies that much of the impact from seabed exposure comes from factors other than QSA-related projects, whereas IID’s DEIR/DEIS shows that the water transfer alone could cause as much as 50,000 acres (78 square miles) of seabed sediments to be exposed. (IID DEIR/DEIS, p. 3.7-34.) According to the DPEIR, this exposure “would only marginally increase the total land area within the ROI that presently generates fugitive dust emissions,” which is true in a literal sense, but the margin of increase – 78 square miles of exposed seabed – is greater than the size of the largest single source of air pollution in the United States, Owens Lake, at 60 square miles of exposed lakebed! The statement that the level of dust emissions would be contingent on the amount of human disturbances is bare assertion – there is absolutely no explanation for why wind would not generate substantial, even extraordinary, PM10 emissions from a seabed of exposed salts and sediments that is larger than the dry lakebed that is the largest source of PM10 in the nation.

e. Growth-inducing impacts

The DPEIR states that the proposed project will not have a growth-inducing impact on San Diego because “[p]rojected future supply will match the year 2020 demand” and “[t]he Proposed project will not change the assumptions upon which SANDAG has based its population projections for the region.” However, the transfer will supply SDCWA with between 130 and 200 KAF of Colorado River water, a source of water it would not have otherwise, which is as much as nearly 25 percent of the region’s projected need for 2020. This is a significant enhancement in water supply reliability.

17

And that means the project would have growth-inducing impacts. The adoption of SB 221 in October 2001 changed California’s statutory climate, clarifying the transfer’s growth-inducing impacts at the points of delivery. SB 221 prohibits approval of new developments of at least 500 units, unless the applicable public water system verifies that a sufficient water supply is available, or in addition, a specified finding is made by the local agency that sufficient water supplies (including transfer water) are or will be available prior to completion of the project. (See Gov’t Code § 66473.7(a)(2)(D).) A 1999 IID newsletter specifically notes this objective: “The proposed Project is designed to . . . 3) provide SDCWA with a reliable, long-term and cost effective water supply to provide drought protection and to accommodate current and projected

demands for municipal and agricultural water.” (IID and SDCWA Water Conservation and Transfer Project, “Project Newsletter,” p.1, dated November 1999.)

17

As the passage of SB 221 reinforces, having plans to obtain water, which is what the DPEIR’s finding of no significant impact rests upon, is not the same as obtaining a reliable source of water. San Diego’s acquisition of a reliable supply via IID will certainly improve developers’ ability to meet the standard of SB 221, and will fuel growth in the region.

4. The mitigation proposed for impacts to the Sea is inadequate and unlikely to be implemented.

18

The DPEIR describes two possible strategies designed to mitigate for biological impacts at the Sea. The first involves construction of a fish hatchery and 5,000 acres of ponds constructed to raise fish to support fish-eating birds. The second involves following land and providing replacement water to hold the Sea’s salinity and elevation at baseline levels. (DPEIR, p. 3.2-28.)

The fish-pond strategy raises more questions than it answers. It is far from clear whether the proposal is of sufficient scale to support the tremendous populations of fish-eating birds that currently rely on the Sea. There is no indication that the ponds will support a fishery equivalent to the one that currently exists in the Sea. Water supply, land availability, and other important considerations are not described. And the project does not even purport to address impacts to recreational fisheries or air quality.

As importantly, there is no indication that either mitigation strategy described can be accomplished under the current terms of the QSA and the IID – San Diego water transfer agreement, and there are substantial reasons, though the DPEIR does not mention them, for believing they cannot be implemented. As mentioned above, the QSA currently limits IID’s financial responsibility for QSA-related impacts to 15 million dollars, CVWD’s financial responsibility to 2.1 million dollars, and MWD’s to 5 million dollars. Although the DPEIR does not give a cost estimate for the fish-pond proposal, our understanding is that the cost would exceed 100 million dollars. Regarding the replacement-water strategy, IID’s transfer agreement with San Diego appears to prohibit following as a method of conserving water for the first 130,000 acre-feet of water transferred. In sum, the mitigation the DPEIR describes for the project is simply paper mitigation; unless the terms of the QSA or the transfer agreement are altered, the project’s serious impacts on the Sea will be left unmitigated.

5. The DPEIR presents no program-level alternatives to the proposed project.

19

CEQA requires that an EIR must consider a reasonable range of alternatives to the project. The DPEIR analyzes a no project alternative and three alternatives to the proposed project: 1) Implement the proposed project while minimizing changes in points of Colorado River diversions, 2) reduce the IID/SDCWA transfer to 230 KAF, and 3) implement the IID/SDCWA transfer with replacement water. However, these three alternatives are really just alternative means of implementing project components; the DPEIR presents no program-level alternative at all. California courts have found that “the methods used or rejected in carrying out the project

are not alternatives to the project,” “[a]n alternative to a proposed activity is just that—a description of *another* activity or project that responds to the major environmental issues identified during the planning process.” (*Friends of the Old Trees v. Department of Forestry*, (1st Dist. 1997) 52 Cal.App.4th 1383, 1405.)

19

This failure to present a genuine alternative is also problematic because, as noted above, execution of the QSA is contingent upon execution of several other agreements and receipt of several public approvals which have not yet taken place. It is not clear from the DPEIR whether there is any fallback provision should one or more of the needed agreements or approvals not come to pass, nor is it clear that there is any alternative QSA that could be implemented should the current version not be approved.

* * *

The DPEIR does not adequately analyze the impacts of the QSA and its component projects, does not provide any realistic mitigation for many of the impacts that are recognized, and does not provide any genuine alternative to the proposed course of action. We recommend that the water agencies revise the DPEIR to reflect the comments in this letter and others submitted by the public and issue a supplemental DPEIR. Thank you for the opportunity to comment on this DPEIR.

20

Sincerely,

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Defenders of Wildlife, March 26, 2002

1. The PEIR does address the QSA's impacts to the Salton Sea. Changes to the Sea's elevation and water quality, including salinity, are described in sections 3.0 and 3.1.2.3; they are summarized in Table 3.1-22. Impacts to fish and birds are discussed in section 3.2.2.3, and impacts to fish-eating birds and sensitive species are found to be significant but feasibly mitigable. Impacts to recreational resources and air quality are addressed in sections 3.6 and 3.7, respectively, and appropriate mitigation measures are identified. Mitigation measures have been identified for all significant impacts, where feasible. Where no feasible measures have been identified, this is clearly noted in the text. Please note that Mitigation Strategy 1 (development and maintenance of foraging ponds) has been removed from consideration due to U.S. Fish and Wildlife Service (Service) and California Department of Fish and Game (CDFG) concerns regarding the potential for the ultimate success of this approach and the absence of a suitable back-up position if the foraging pond approach failed.

The final selection of mitigation measures will occur once the Project is approved. The co-lead agencies will be responsible for implementing the adopted mitigation measures in accordance with legal requirements. In accordance with CEQA Guidelines Sections 15091 and 15096(h), they must prepare findings that the Proposed Project has been changed (including by the adoption of mitigation measures) in a manner that avoids or substantially reduces each significant impact. When making the findings, the agencies must ensure that the adopted mitigation measures are fully enforceable through permit conditions, agreements, or other measures. If the agencies cannot make these findings, they must find that changes to the Project are within another agency's jurisdiction and that such changes have been or can and should be adopted by the other agency or that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures. CEQA Guidelines Sections 15091(d) and 15097 also require lead agencies to adopt a Mitigation Monitoring and Report Program (MMRP), which ensures compliance with adopted mitigation measures during Project implementation. The MMRP must clearly state who is responsible for implementing a given mitigation measure, how and when the measure will be implemented, and how its implementation will be verified.

2. The Draft PEIR needs to be recirculated only if significant new information is added to the EIR (CEQA Guidelines Section 15088.5[a]) that identifies:
 - A significant new environmental impact from the project or from a new mitigation measure proposed to be implemented.
 - A substantial increase in the severity of an impact unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - A feasible project alternative or mitigation measure considerably different from those analyzed that would clearly reduce impacts, but which the project proponent declines to adopt.

Recirculation is also required if the EIR is so fundamentally and basically inadequate, and conclusory, that meaningful public review and comment are precluded.

Revisions made to the QSA Draft PEIR do not require recirculation because none of these events has occurred. The Draft PEIR did adequately analyze the impacts of the QSA, does provide realistic mitigation for Project impacts, and does provide genuine alternatives to the Proposed Project. The Final PEIR serves to clarify, amplify, and make minor modifications, in which case recirculation is not required (CEQA Guidelines Section 15088.5[b]).

3. Please refer to Antonio Rossman (March 26, 2002), response no. 5, regarding lead agencies.

It is premature to make the determination that the co-lead agencies will be unable to fund the Salton Sea mitigation measures at this stage of the environmental review process. It is common CEQA practice to include all ostensibly feasible mitigation measures in a Draft EIR, since ultimate determinations of feasibility are not made until findings are adopted at the end of the CEQA process. (Any adopted mitigation measures will be fully funded by a combination of federal and state agencies and the co-lead agencies; however, details of specific funding sources and arrangements are not required at the time that findings are made.) Further, CEQA requires an EIR to identify mitigation measures for significant impacts regardless of lead agency commitment or authority to implement the measures. See CEQA Guidelines Section 15126.4(a)(1)(A), which requires EIRs to identify those measures proposed by project proponents to be included in the project, versus other measures that could reasonably be expected to reduce adverse impacts. Also refer to response no. 1 above.

4. The basic terms of the QSA have been established and are included in Appendix A. The actions that would implement these terms bracket the maximum physical environmental impacts that could occur if the QSA were implemented. Some contractual changes could occur prior to the finalization of the QSA, but these would not result in impacts beyond those that are analyzed in the PEIR. Thus, the terms of the QSA have been established in sufficient detail to support the development of this PEIR and in fact provide a worst-case analysis of all environmental impacts. The QSA is an agreement among the parties associated with the implementation of several projects that could be approved independently.
5. See response no. 3. Mitigation Strategy 2 would reduce the identified significant impacts to less than significant levels. Water in addition to the transfer water would be used to implement this mitigation measure. This water could be gained through increased on-farm conservation, system-based conservation measures, and/or fallowing.
6. This comment is noted. Please refer to the responses to detailed comments below.
7. The QSA focused on changes to elevation, surface area, and salinity resulting from the reduced inflows. Consistent with model results generated by the Imperial Irrigation District Decision Support System (IIDSS) (upon which the QSA's impacts to the Salton Sea are based), the amount of water IID releases to the Salton Sea is estimated to decrease, as shown in PEIR sections 3.1.2.3 and 3.1.2.4 (Table 3.1-21).
8. The PEIR, section 3.1.2.3, acknowledges that selenium concentrations are an impact to IID drains. The PEIR states, "...the decrease in the amount of water discharged from the Alamo River and IID drains could result in selenium concentrations exceeding the EPA

Aquatic Life Criterion for Continuous Concentration, and thus impact biological resources in these areas. This impact is considered a significant and unavoidable impact to water quality.”

No regulatory standard exists for total suspended solids (TSS) or salinity in the Salton Sea, making a significance determination related to hydrology unwarranted. Further, the Salton Sea is an already degraded water body and does not meet Basin Plan objectives. There is evidence that water quality of the Sea will decline with or without implementation of the QSA, although transfers under the QSA would hasten this inevitable decline. For example, without the QSA, Salton Sea salinity levels could surpass 60,000 mg/L in year 2023. Absent mitigation, with the QSA, the 60,000 mg/L level could be surpassed as early as 2017 (assuming on-farm conservation is used as the primary conservation method). Although the Proposed Project’s contribution to the decline in the Sea’s water quality is not considered significant, impacts to biological and recreational resources from increased salinity were found to be significant (sections 3.2 and 3.6, respectively).

9. Modeling results generated by the IIDSS indicate that with implementation of the QSA there will be an increase in selenium concentrations in the IID surface drains discharging directly to the Salton Sea, and an increase in selenium concentrations in the Alamo River and in the New River outlets to the Salton Sea (refer to Table 3.1-15).

Selenium is carried into the IID service area from imported Colorado River irrigation water and tends to build up in soils and root zones as crops are irrigated. Periodically, farmers leach their fields, and the excess salts and selenium dissolve out of the root zone and are released to the tilewater system. Ultimately, concentrations of dissolved salt and selenium combine in the water that is released into the IID surface drains. As a result, selenium concentration would be expected to exceed the specific water quality criteria at the point of release from surface drains that directly release to the Salton Sea, the Alamo River outlet, and New River outlet to the Salton Sea. This impact cannot be feasibly mitigated on a project-specific basis since the source of selenium lies largely outside the Project area (primarily in Colorado). Until a comprehensive, basin-wide mitigation strategy is developed that takes into consideration sources of selenium throughout the Colorado River Basin, this impact is considered significant and unavoidable.

10. There are a number of estimates with wide variation of the time it would require for the Salton Sea to no longer support its fish populations. A very conservative estimate is used in the PEIR as a timeframe for the reduction of the fisheries to ensure that impacts to the Sea were not underestimated. If one were to use a different, longer estimate, then the impact of the implementation of the components of the QSA would also stretch out proportionally for the resource.

The biological impact to the non-native sport fisheries in the Salton Sea was based on significance thresholds set forth in the State CEQA Guidelines, Appendix G, and was not considered significant in and of itself since the fish populations are not native. The impacts to fish-eating birds were considered significant due to the decline of the non-native fisheries that is their food source. Additionally, a significant impact to the loss of the sport fisheries associated with recreational sport fishing was also considered

- significant. This analysis and the assignment of significance are considered appropriate under CEQA.
11. The PEIR identifies a significant impact to fish-eating birds due to the decline in the fish population resulting from increased salinity in the Salton Sea. A potential strategy (Mitigation Strategy 2) has been identified to reduce the impacts associated with implementation of the Proposed Project to less than significant levels. It is appropriate to describe the impact to fish-eating birds as a decline in population. The increase in salinity would occur over a number of years, reducing fish populations and consequently, the numbers of fish-eating birds. Even with the increased salinity that would reach levels that would no longer support fish, there would likely be some areas in the Salton Sea, such as those near fresh water inflows, which would have salinity levels able to support a reduced fishery. Therefore, it is expected that some fish-eating birds would be able to be supported by the Salton Sea in the future under both the Proposed Project and Future Baseline. Mitigation measures have been identified in section 3.2.3 to reduce the effects of the implementation of the Proposed Project to less than significant levels. The co-lead agencies, however, are not obligated to mitigate for the overall decline of the Salton Sea, including increased salinity, which would occur whether or not the proposed water transfers were implemented.
 12. The primary habitat of the Yuma clapper rail and black rail is on the managed marshes in the refuges, which receive water purchased from IID, not the Salton Sea. Therefore, changes in Salton Sea levels and salinity would not affect the managed marshes or these species. Because these species do not depend upon the Sea as a habitat and a food source, a decrease in the sea level that would isolate these marsh areas would not affect those species. Because irrigation water is used to supply these marshes, no impact from selenium buildup would occur.
 13. Sufficient information was provided to support the conclusion that impacts would be significant but mitigable. The QSA PEIR analyzes impacts at a program level. As appropriate, more specific details are described in the project-specific analysis contained in the IID Water Conservation and Transfer Project EIR/EIS, but impacts and mitigation measures are similar to those described in the QSA PEIR.
 14. Information regarding the projected decrease in the Salton Sea water elevation is provided at the beginning of the impact analysis, in section 3.0. Section 3.6.2.3 of the PEIR notes that facilities would have to be relocated. This is not an unprecedented situation. As noted in section 3.6.1.6, the Salton Sea State Recreation Area was built about 45 years ago when the Sea's elevation was lower. Increasing water levels caused recreational facilities to be flooded in the 1970s and they had to be relocated. Even now, some areas are subject to flooding due to relatively high water levels.
 15. The discussion in the PEIR is not inconsistent with this comment. The significant visual impacts to the Salton Sea are appropriately characterized in section 3.10.2.3. As acknowledged in the comment, the PEIR states that "views of the Sea would be possible only from a much greater distance from the developed public viewing facilities at these locations." To mitigate this impact, the PEIR states that recreational facilities would have to be relocated to an appropriate site adjacent to the Salton Sea and that access would have to be extended to the new shoreline.

16. Analysis of available information and experience at Owens Lake and at the Salton Sea shows a substantial difference in driving forces that create dust emissions, as well as substantial differences in the composition of Owens Lake sediments versus those at the Salton Sea. The frequency of higher wind speeds is greater at Owens Lake than at the Salton Sea. Experience at Owens Lake has shown that there is a strong correlation between sand motion and PM₁₀ emissions. There are substantial deposits of sand on the Owens Lake bed surface and numerous sand dunes surrounding the area. There is very little sand in the areas of the Salton Sea that would be exposed by the drop in sea elevation. Soil chemistry and temperature ranges at the Salton Sea differ markedly from those at Owens Lake. The combination of weaker driving forces for emissions at the Salton Sea and different soil chemistry support the conclusion that exposed sediments at the Salton Sea will probably not be as emissive as they have been at Owens Lake. However, as identified in section 3.7.3, Mitigation Strategy 2 would reduce significant air quality impacts at the Salton Sea.
17. Please see the response to CDFG comment 42. Regarding State Bill (SB) 221, it is correct that local agencies approving subdivisions of more than 500 units must now make a finding of sufficient water supply. However, San Diego local governments' SB 221 findings will not be changed by the QSA, because MWD has sufficient supplies to meet demands within the entire MWD service area even if some planned water projects are slowed in implementation, and because SDCWA in the absence of the QSA has alternative means to meet demands.

The comment refers to the QSA as increasing reliability, thus allowing developers to more easily comply with SB221. As stated in section 2.2 of the PEIR, one QSA objective is to "ensure the certainty and/or reliability of Colorado River water supplies"; this objective is achieved through maintaining the historic reliability of Colorado River water supplies. Another objective is to "assist (the co-lead) agencies in meeting their water demands without exceeding California's apportionment of Colorado River water"; such assistance would be provided not through creating a new water supply, but rather through redistribution of reduced Colorado River water supplies.

Because the QSA water transfers have been described as "enhancing" or "increasing" water supply reliability, it is helpful to explain such statements in the context of the PEIR statement that the transfers "maintain" historic reliability of current water supplies. Until now, the reliability and availability of the Colorado River supply for MWD and its member agencies, including SDCWA, have been constant, even when imported water from the State Water Project and local supplies have been curtailed. For many years, MWD's Colorado River Aqueduct has operated at or near full capacity, and the SDCWA supply from MWD has been largely Colorado River water (from FY 1991 through 2000, 84 percent of MWD deliveries to SDCWA consisted of Colorado River water). Although about 700,000 AFY of water required to fill the aqueduct is not within California's normal year apportionment of 4.4 million acre-feet, that water was available until 1996 due to the availability of the unused apportionments of Arizona and Nevada.

As those states are now at or near full use of their apportionments, California has relied upon surplus declarations since 1997 to fill the Colorado River Aqueduct. The QSA components are designed to help keep the aqueduct full into the foreseeable future. This will allow MWD and SDCWA to continue to rely on Colorado River water to the

extent they have relied on it in the past and rely on it today. If the QSA or other actions designed to ensure a full aqueduct in the future were not implemented, then the ability to fill the aqueduct would be dependent on the availability of surplus water as determined on a year-to-year basis and other water supply sources. Therefore, in the context of historic and present availability of Colorado River water, the purpose of the QSA is to maintain the availability and reliability of that supply.

18. Continued coordination with the Service and CDFG during the public review period for the Draft PEIR resulted in the removal of Mitigation Strategy 1 from consideration due to concerns regarding the potential for the ultimate success of this approach and the absence of a suitable back-up position if the foraging pond approach failed. Therefore, the co-lead agencies now propose the implementation of Mitigation Strategy 2 to mitigate for the impacts to biological resources, recreational resources, and air quality associated with the Proposed Project. The appropriate sections of the PEIR have been revised to reflect this change.
19. The alternatives presented in the PEIR are in fact “genuine” “program-level alternatives.” They represent a reasonable range of alternatives to the proposed QSA that could feasibly attain most of the basic program objectives (CEQA Guidelines Section 15126.6). Each alternative has been formulated to address a significant impact of the Proposed Project by modifying one or more QSA components, as stated by the comment.

PEIR section 5.3.2 documents the rationale for rejecting other alternatives – because they either do not meet the basic project objective and/or are infeasible. It is correct that the PEIR does not present a “fallback provision” if the agreements or approvals needed to implement the QSA do not occur. The no-project alternative, presented in Chapter 5 of the PEIR, describes what is reasonably expected to occur if the agreements and approvals are not implemented.

20. Please refer to response no. 2 above.

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March 25, 2002

RECEIVED
MAR 26 2002
SAIC SANTA BARBARA

Robert D. Thompson
QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

Re: Draft Program Environmental Impact Report for Implementation of the Colorado River
Quantification Settlement Agreement (QSA DPEIR)

Dear Mr. Thompson:

The following comments are submitted on behalf of National Audubon Society, Planning and Conservation League, Defenders of Wildlife and National Wildlife Federation ("Environmental Organizations"). While the Environmental Organizations agree that it is beneficial to reduce California's usage of Colorado's river water, the significant environmental consequences of implementing the Quantification Settlement Agreement (QSA DPEIR) must be carefully and meaningfully evaluated so that the public and the public's decision-makers are fully apprised of ways to accomplish this laudable goal without significant and irreversible environmental harm. California's landscape is littered with "good intentions" that have significantly damaged the natural environment.

Surprisingly, even though this draft program EIR has been prepared on the QSA, the text of the QSA has been omitted from the document.

1. THE PURPOSE OF THE DPEIR IS UNCLEAR.

Despite its intentions, the Environmental Organizations do not believe that the DPEIR provides a programmatic evaluation of the nine component parts identified in the agreement. As pointed out in the document and in the U.S. EPA's NOP letter, many of the component parts are undergoing separate environmental analysis. Rather than a comprehensive, programmatic, or basin-wide evaluation of the nine component parts as a sum of its many parts, the DPEIR merely summarizes information from other documents or refers the reader to many other documents that have been or are now going through public review.

Since the QSA has been adopted by three of the co-lead agencies, and is expected to benefit the fourth, the DPEIR appears to be nothing more than a *post-hoc* rationalization of a decision

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already made.

According to the CEQA Guidelines, a program EIR can provide the following advantages:

- 1) Provide an occasion for more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,
- 2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,
- 3) Avoid duplicative reconsideration of basic policy considerations,
- 4) Allow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,
- 5) Allow reduction in paperwork.

It does not appear that any of the Guidelines advantages have been met. In fact it would appear from the DPEIR that the implementation of the QSA is dependent upon the implementation of the separate component parts. The QSA DPEIR merely evaluates the effects of each component part within each lead agency's service area, rather than evaluating the broader programmatic impacts.

As the DPEIR admits, the "QSA is based on a series of proposed agreements, which include water conservation/transfer and exchange projects among IID, CVWD, MWD, and SDCWA." [DPEIR, p. 2-1.] The DPEIR then goes on to describe the "key concepts and provisions of the QSA" and the "QSA components" and the various CEQA and/or NEPA review documents that either have been, are currently being, or will be prepared to address the impacts of each component part. [DPEIR, p. 2.3.] Although the DPEIR claims that it is evaluating "the aggregate of the QSA components," Table 2.4-1 merely depicts case-by-case environmental review of the QSA component parts.

Any claimed programmatic environmental review appears to be illusory. At best the DPEIR appears to be a "road-map" for where to find project-specific analysis of each component part of the QSA. For example, Item F. of Table 2.4-1 entitled "Transfer of conserved water" (67.7 KAFY) claims that the "QSA PEIR provides program-level CEQA analysis for the All American Canal Lining Project, a component of the Proposed Project." [DPEIR, p. 2-5.] In reality, the alleged program analysis within the DPEIR of the All American Canal Lining Project's impact on water resources states: "The All-American Canal lining was addressed in a project-specific EIS/EIR certified in 1994."

Regarding the IID/SDCWA transfer project, the QSA DPEIR is simply a stripped-down analysis of the DEIR/DEIS that is being circulated by IID and the U.S. BOR.

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2. SWRCB SHOULD BE LEAD AGENCY FOR QSA DPEIR

As noted above, the QSA DPEIR has four (4) co-lead agencies: the Coachella Valley Water District ("CVWD"), the Imperial Irrigation District ("IID"), the Metropolitan Water District of Southern California ("MWD"), and the San Diego County Water Authority ("SDCWA").¹ [DPEIR, pp. ES-1, 2-23] The co-lead agencies are the parties to the QSA agreement and have also entered into an agreement to act as co-lead agencies. [DPEIR, p. 1-1; Appendix B, Environmental Checklist] CEQA requires that the public agency with the principal responsibility over the project assume the role as lead agency.²

Where a project is to be carried or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project.³

2

The Federal lead agency, which is preparing a separate NEPA EIS on the Implementation Agreement, is the Secretary of Interior due to the Secretary's "responsibility and authority to manage [the delivery] of Colorado River water under the Law of the River." [DPEIR, p. 2-1] The Secretary is then accountable for this document.

It is not clear that any of the four lead agencies will be accountable for the QSA DPEIR. As the DPEIR states: "The co-lead agencies for this PEIR are CVWD, IID, MWD, and SDCWA. Each agency will independently evaluate and, if appropriate, certify this PEIR and make CEQA findings. [DPEIR, p. 2.23, emphasis added.]

The more proper lead agency should be the State Water Resources Control Board because, as is provided in the QSA summary at Appendix A, SWRCB is to enter "a final order of approval of the Petition for Change relating to the IID/SDCWA Water Conservation and Transfer Agreement and the IID/CVWD Acquisition Agreement upon terms and conditions set forth in the QSA." [DPEIR, p. 1-1, Appendix A, p. A-7.]

Although the co-lead agencies have a stake in seeing that the QSA is implemented, they do not have the principal responsibility for carrying out or approving the implementation of the QSA. SWRCB does.⁴ Therefore, the co-lead agencies should have designated the SWRCB as the lead agency, as the federal government designated the Secretary of Interior to be the lead agency on the IA DEIS.

¹ SDCWA is not a party to the QSA but has an interest in its implementation. [DPEIR, p.1-1.]

² *Planning and Conservation League, et al., v. Department of Water Resources ("PCL")* (2000) 83 Cal.App.4th 892, 905-907.

³ CEQA Guidelines, § 15050, subd. (a).

⁴ SDCWA is not a party to the QSA and has no responsibility in implementing the QSA. [DPEIR, p. 1-1.]

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3. THE QSA DPEIR's USE OF A FUTURE ENVIRONMENTAL BASELINE TRIVIALIZES THE IMPACTS OF COMPONENT PARTS TO THE QSA ON THE SALTON SEA.

3

CEQA requires evaluation of a project's impacts compared to the "physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time the environmental analysis is commenced."⁵ "Special emphasis should be placed on environmental resources that are rare or unique to that region."⁶

The purpose of this requirement is to ensure the proper environmental setting is used by the lead agency for determining whether an impact is significant.⁷ Moreover the discussion must include "relevant specifics of the area . . . alterations to ecological systems."⁸

California Courts have established that

[b]efore the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.⁹

California courts have interpreted the statutory language literally, requiring measurement against current conditions. *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, was a case involving projects that proposed to develop land at lower densities than the maximum allowed for in the general plan and zoning regulations. The California Court of Appeal held that the lead agency should have evaluated the proposed projects' impacts in light of the current existing conditions, not by assuming the maximum conditions possible under the general plan.

Here, the QSA DPEIR evaluates the proposed project's impacts in light of conditions projected to exist in 75 years. This allows the agencies to trivialize the impact the transfer of water will have on the Salton Sea. Basically, the agencies are claiming that under current conditions the Sea will become hypersaline, therefore conservation practices that allow the transfer of conserved irrigation water to urban areas will only have a temporal impact on the Sea.

⁵ CEQA Guidelines, § 15125, subd. (a).

⁶ *Id.* at subd. (c).

⁷ *Id.* at subd. (a).

⁸ *Id.*, § 15126.2, subd. (a).

⁹ *Save Our Peninsula Committee v. Monterey Co. Board of Supervisors* (2001) 87 Cal.App.4th 99 at pages 119-120, citing to *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952; see also Remy, *et al.*, Guide to the California Environmental Quality Act ("CEQA") (10th ed. 1999) ch.5, pt. C "Determining the Proper 'Baseline' of Environmental Conditions for Purposes of Measuring a Project's Impacts," pp. 162-171.

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However, what the agencies are ignoring is the significance of the Salton Sea to the species that are at risk. Furthermore, the agencies completely ignore Federal policies that seek to restore and protect the Salton Sea for the fish and wildlife that depend upon this unique natural resource. The DPEIR fails to evaluate the significance of the agencies' proposed actions, which will accelerate the salinity within the Sea, against the backdrop of the significance of this resource to the migratory birds within the Pacific flyway.

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The DPEIR claims that "[t]his impact to fisheries (more rapid loss) is considered less-than-significant, since these species are not native to the Salton Sea." CEQA is concerned about substantial physical change to the existing environment. The fact that the existing environment includes non-native fish does not negate a project's significant change to that environment. The abundance of fish at the Salton Sea is due to the fact that the introduced tilapia is a prolific breeder and well adapted to the Salton Sea. The fish in the Salton Sea are an important food source for birds and fish. The loss of these non-native fish will have a profound effect on the physical environment.

4

The DPEIR claims that the loss of wetland or riparian habitat would not have a significant impact on those species dependent on those habitats. About 20% of the entire population of the Yuma Clapper rail is dependent upon wetland habitat along the south end of the Salton Sea, which will be lost if the QSA is implemented.

5

By improperly focusing on the Sea as an agricultural repository, the QSA DEIR fails to adequately describe the setting. The QSA DEIR improperly minimizes the impacts to the current physical environment of the Salton Sea. The Salton Sea will be significantly adversely impacted by increased salinity once it stops receiving Colorado River water. The EIR must "assess the impacts of a proposed project by examining changes in the physical conditions in the affected area."¹⁰ In other words, "[t]he significance of an activity depends upon the setting."¹¹

6

The DPEIR fails to recognize the importance of the Salton Sea to major portions of total populations of some bird species that use it. Furthermore, the DPEIR fails to consider the regional significance of the Salton Sea within the context of the migratory birds within the Pacific flyway. In a terse summary of potentially significant impacts, the DPEIR simply dismisses these environmental consequences. Entire populations of bird species are at risk. One of the most significant stop-over points along the Pacific flyway may be irreversibly impacted by the agencies' program. The DPEIR simply trivializes these extraordinary losses.

7

The alleged mitigation strategies to reduce the impact of accelerating the loss of fish and and wildlife at the Sea are poorly described. The feasibility of constructing 5,000 acres of ponds to raise fish to support fish-eating birds is unknown. Moreover, the success of these ponds as mitigation for loss of the Sea is sheer speculation. Essentially, the agencies would be replacing

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¹⁰ *County of Amador, supra*, 76 Cal.App.4th at 954.

¹¹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

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the 235,000-acre Salton Sea, which has been described by the Salton Sea Authority as “perhaps the most productive fishery in the world,” with 5,000 acres of man-made hatchery ponds. 8

Moreover, the DPEIR concedes that these hatchery ponds would produce potentially significant impacts to air and water quality, as well as an unavoidable impact to agriculture. Where will the water for these ponds come from? How will the agencies control diseases within these ponds? How can these ponds serve the diversity of species that now depend upon the 235,000-acre Salton Sea? 9

The other mitigation strategy is to take agricultural land out of production. However, none of the agencies have the authority to carry out this mitigation strategy. 10

The QSA DPEIR simply fails to adequately describe the environmental setting by improperly treating the Sea as a repository of agricultural waste water, rather than as the place described by the Salton Sea Authority as “California’s crown jewel of avian biodiversity.” By illegally trivializing the significance of the Salton Sea, the agencies minimize the profound environmental consequences of their program. 11

4. The QSA DPEIR FAILS TO ADEQUATELY ADDRESS GROWTH-INDUCING IMPACTS 12

CEQA requires that an EIR discuss growth-inducing impacts.¹² An EIR must describe the ways in which a “proposed project may foster economic or population growth or the construction of additional housing, either directly or indirectly, in the surrounding environment.”¹³ The QSA DPEIR claims that no new water is being generated for urban water use. The agencies claim, for example, that SDCWA has entitlements to future water supplies from MWD. However, future entitlements “represent nothing but hopes, expectations, water futures or, [] paper water.”¹⁴ It is foreseeable that the service areas may not receive all future entitlements. The current physical environmental baseline is the current water usage.

Therefore, the availability of IID conservation water for urban use is an additional supply that does not now exist. The growth-inducing effects of this additional urban water must be considered in evaluating potential growth-inducing impacts.

5. QSA DPEIR FAILS TO EVALUATE CUMULATIVELY CONSIDERABLE IMPACT OF SALTON SEA IMPACTS ON MIGRATORY BIRDS. 13

The QSA DPEIR fails to even consider the cumulative impact to the migratory birds within the Pacific flyway of losing the Salton Sea as a stopover point in the evolutionary migration patterns of the affected bird species. Hundreds of thousands and on some days millions of migratory birds use the Salton Sea as a stopping point to feed and rest. Because the DPEIR fails to

¹² Pub. Resources Code, § 21100, subd. (b)(5); CEQA Guidelines, §§ 15126, subd. (d), 15126.2, subd. (d).

¹³ CEQA Guidelines, § 15126.2, subd. (d).

¹⁴ See *PCL, supra*, 83 Cal.App.4th at page 908, fn5.

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adequately describe the significance of the Salton Sea in a regional context, especially with regard to migratory birds, the DPEIR's evaluation of cumulative impacts is limited to brief discussions of related projects within the Lower Colorado River basin. The geographic scope of the impacts to migratory bird species exceeds the Lower Colorado River basin. The cumulative loss of places like the Salton Sea along the Pacific flyway needs to be evaluated in order to appreciate the severity of the cumulative impacts to migratory birds.

↑ 13

By providing this context, the importance of the Salton Sea Restoration Project, which is dismissed in the QSA DPEIR as speculative, and the significance of the impact of the QSA program on this project is brought into focus.

6. CONCLUSION

In order to comply with CEQA's requirements, the aforementioned inadequacies must be remedied prior to any final determination made either on the QSA DPEIR or by any California public agency to implement the QSA.

14

Sincerely,



J. William Yeates

Law Office of J. William Yeates, on behalf of National Audubon Society, Planning and Conservation League, Defenders of Wildlife, and National Wildlife Federation, March 25, 2002

1. The PEIR evaluates the full suite of QSA components and projects in “aggregate” in the project-level evaluation (Chapter 3) and combines the impacts of all QSA components with other foreseeable projects in the cumulative analysis (Chapter 4). The PEIR does not evaluate any component that has overlapping potential effects without considering the other potential effects on other components of the Proposed Project. For example, impacts to the Salton Sea would result from the combination of water transfers/conservation measures that would occur in more than one service area, not just one component. Impacts to the lower Colorado River also take into consideration all project components that would affect river flows. Other impacts, such as noise impacts, are more localized and would not contribute to a “basin-wide” impact.

Note that the QSA has *not* been adopted by any of the co-lead agencies. Its Key Terms have been negotiated and provide a sufficient framework from which to measure the Proposed Project’s environmental impacts.

The “road map” concept was intentionally included as a portion of the PEIR and was requested in comments on the Notice of Preparation. The PEIR utilizes as appropriate the analyses of prior and current applicable evaluations, including those of the canal lining EIS/EIRs.

Regarding the IID Water Conservation and Transfer Project EIR/EIS, the PEIR has a much wider region of influence, covers all of the QSA components, and evaluates some components at a project level. The actions considered in the IID/SDCWA analysis are project-specific. That EIR/EIS only evaluates the QSA in a cumulative sense.

2. See response to Defenders of Wildlife comment no. 3. The State Water Resources Board (SWRCB) has no role in carrying out or approving the QSA; it is simply a potentially responsible agency for the IID/SDCWA transfer. Further, the SWRCB is taking no action on QSA components other than the IID/SDCWA transfer; the co-lead agencies, on the other hand, collectively have responsibility for implementing the QSA. Also note that a public agency is required to be the lead agency for its own projects (CEQA Guidelines Section 15051[a]).
3. See response to California Department of Fish and Game (CDFG) comment no. 4. The comment cites the EPIC case, in which a proposed land use change was required to be evaluated against a baseline of existing conditions, versus buildout of a general plan. Although the use of existing environmental conditions is an appropriate baseline under those circumstances because buildout of the general plan was speculative, for the QSA, a future baseline is appropriate for certain impacts because there will be changes in the environment reasonably certain to occur by the time the QSA is fully implemented.

Salton Sea impacts are analyzed in detail, and their significance evaluated, throughout Chapter 3 of the PEIR. The federal Salton Sea Reclamation Act and its policies are recognized in section 1.5 of the PEIR. This Act authorized the Salton Sea Restoration Project, which is being implemented by the U.S. Bureau of Reclamation in cooperation with the Salton Sea Authority, in accordance with objectives driven by the federal law. Note that at present, the Salton Sea Restoration Project has not been defined; at this

point it remains simply a Feasibility Study. Additionally, by law, it is intended to be developed based on the assumption that the water transfers are in place.

4. The biological impact to the non-native sport fisheries in the Salton Sea was based on significance thresholds set forth in CEQA Guidelines, Appendix G, and was not considered significant in and of itself since the fish populations are not native. The impacts to fish-eating birds were considered significant due to the decline of the non-native fisheries that is their food source. Additionally, a significant recreational impact associated with the loss of the sport fisheries was identified. This analysis and the assignment of significance are considered appropriate under CEQA.
5. It is true that a significant population of Yuma clapper rail does reside on the southern end of the Salton Sea. The primary habitat of the Yuma clapper rail is on the managed marshes in the refuges, which receive water purchased from IID, not the Salton Sea. Therefore, changes in Salton Sea levels and salinity would not affect the managed marshes or these species. Because these species do not depend upon the Sea as a habitat and a food source, a decrease in the sea level that would isolate these marsh areas would not affect those species.
6. The PEIR correctly identifies the Salton Sea as a repository for agricultural drainage water since that is its legal designation. However, the PEIR does not focus on the Sea as a repository and addresses the extensive biological resources of the Salton Sea in section 3.2.1.6. It addresses the impacts to these resources in section 3.2.2.3.

It is important to note that the PEIR focuses on the impacts of implementation of the Proposed Project on the Salton Sea, not on the overall projected increase in salinity and subsequent substantial decline in the biological resources of the Salton Sea whether or not the Proposed Project were implemented (except as discussed under the no-project alternative). The impacts of the implementation of the Proposed Project, including the acceleration of the rate of salinity, are discussed in the PEIR. Mitigation measures have been identified to reduce the biological impacts of the Proposed Project to less than significant levels.

7. The PEIR addresses the value of the avian and other resources at the Salton Sea in section 3.2.2.3. As described above in response no. 6, the PEIR addresses the temporal impacts of the Proposed Project, which include the loss of fish populations resulting from the acceleration of the increase in salinity of the Sea. The impact to birds is not trivialized; it is identified as significant. Mitigation measures have been identified in section 3.2.3 of the PEIR to reduce the impact of the Proposed Project to less than significant levels. It should be noted that the impact to migratory birds would occur eventually even without implementation of the Proposed Project.
8. As described above, the mitigation proposed in section 3.2.3 of the PEIR is to mitigate the Proposed Project impacts, not the biological effects of the projected decline of the Salton Sea, which is an ongoing process that will take place whether or not the water transfers are implemented. Please note that Mitigation Strategy 1 (development and maintenance of foraging ponds) has been removed from consideration due to U.S. Fish and Wildlife Service and CDFG concerns regarding the potential for the ultimate success of this approach and the absence of a suitable back-up position if the foraging pond approach failed.

9. Mitigation Strategy 1 has been eliminated from the PEIR.
10. See Defenders of Wildlife response no. 3. The water for Mitigation Strategy 2 would be obtained in a manner similar to the water for the proposed IID Water Conservation and Transfer Project (referred to as Habitat Conservation Plan [HCP] Approach 2 in the EIR/EIS for that project).
11. Please see response to comment no. 6.
12. Please see the response to CDFG comment 42. IID’s conservation of water simply maintains reliability of historic and current Colorado River water deliveries. The EIR does not use future entitlements as a “baseline.” It is foreseeable that the service areas may not receive all future water entitlements, but MWD has sufficient water supplies to meet projected demands within the entire MWD service area even if some future water projects are slowed in implementation.
13. As discussed above, the PEIR addresses the impacts of the Proposed Project on the Salton Sea, including impacts to migratory birds (section 3.2.2.3). Measures have been identified to reduce the temporal impacts of this Project to biological resources to less than significant levels. These also would effectively mitigate potential cumulative impacts to biological resources. As noted above, the Proposed Project is not required to mitigate all impacts associated with the decline of the Salton Sea; rather it is required to mitigate to the extent feasible its own impacts.
14. In compliance with CEQA requirements, the PEIR will consider all comments and provide responses, correcting any errors that were identified. This will necessarily occur before the document is certified and any decisions made regarding the QSA.

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March 14, 2002

VIA FEDERAL EXPRESS

QSA PEIR
Science Applications International Corporation
816 State Street
Santa Barbara, CA 93101

RECEIVED
MAR 15 2002
SAIC SANTA BARBARA

Re: *Draft Program Environmental Impact Report for Implementation of the Colorado River Quantification Settlement Agreement (State Clearinghouse No. 2000061034)*

Dear SAIC:

This letter is submitted on behalf of Save Our Forest and Ranchlands (SOFAR), an organization dedicated to the protection of the wilderness, watershed, and agricultural resources of San Diego County. SOFAR seeks to preserve rural wildlife habitat and natural resources while also curbing costly urban sprawl and making our cities more livable.

On behalf of SOFAR we have reviewed the Draft Program Environmental Impact Report for Implementation of the Colorado River Quantification Settlement Agreement (DEIR). Numerous impacts and issues raised in the DEIR fall outside of SOFAR's purview and we do not comment on them here. However, SOFAR closely follows issues relating to water supply and land development in San Diego County, and is concerned that the DEIR fails to acknowledge the relationship of these issues to the implementation of the Quantification Settlement Agreement (QSA), and thus fails to disclose the full extent of the environmental impacts of the QSA implementation on San Diego County. SOFAR seeks clarification regarding the cumulative, land use, and growth-inducing impacts of the implementation of the QSA in San Diego County.

A stated goal of the Proposed Project is to "agree upon a plan for the future distribution of Colorado River Water" among various water agencies including SDCWA. (DEIR, p. ES-1.) The QSA is "to assist these agencies in meeting their water demands." (DEIR, p. ES-1.) Although the SDCWA is not a signatory to the QSA, "SDCWA would benefit from the QSA since the QSA would facilitate implementation of the 1998 IID/SDCWA Water Conservation and Transfer Agreement." (DEIR, p. ES-2.) The DEIR also states: "With implementation of the Proposed Project, SDCWA would receive 130 to 200 KAF of Colorado River water conserved by IID, replacing water currently received by MWD." (DEIR, p. 2-22 [emphasis added].) SOFAR will comment separately on the environmental documentation for the IID/SDCWA Transfer Agreement. The DEIR regarding implementation of the

QSA PEIR
March 14, 2002
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QSA, however, is incomplete for its failure to take into account the impacts of the IID/SDCWA Transfer Agreement in San Diego County when analyzing the impacts of the QSA.

For example, the DEIR asserts that there would be no physical/construction impacts associated with the implementation of the Proposed Project within the SDCWA service area. (DEIR, pp. 2-22, 3.2-26.) The DEIR states, “The exchange of water with SDCWA would occur through existing infrastructure and would not require construction activities . . .” (DEIR, p. 3.13-12.) However, under the IID/SDCWA Transfer Agreement, SDCWA is responsible for arranging for the necessary conveyance facilities to transport the water to its service area. Although the DEIR assumes that SDCWA will use the Metropolitan Water District’s Colorado River Aqueduct for the water transfer, MWD has stated that it may do so only for the first 30 years of the 75-year term of the Transfer Agreement. San Diego has already engaged in substantial efforts to plan for new water conveyance facilities. A recent aqueduct feasibility study, funded jointly by SDCWA, the state of California and Mexico, reviewed options for a massive new joint aqueduct to convey Colorado River water, transferred to SDCWA from IID under the 1998 Transfer Agreement, from the Colorado River to San Diego and the Baja California region of Mexico. (“*Joint Colorado River Water Conveyance Planning Level Study for San Diego, California - Tijuana, Baja California Region.*”) Such a conveyance facility, while clearly requiring separate environmental review, should not be disregarded as an aspect of the implementation of the QSA in the DEIR.

1

The DEIR finds that the Proposed Project will have no growth-inducing effect in San Diego’s service area because it will not involve additions or expansions to SDCWA’s water delivery and storage system. (DEIR, p. 6-8.) The DEIR also states, however, that the projected future supply of water for San Diego’s service area would “match the year 2020 demand.” (DEIR, p. 6-8.) The projected year 2020 demand is approximately 813,000 AF per year, whereas the current supply is 695,000 AF. It is SOFAR’s position that new water supplies should not be developed absent sound land use plans to prevent sprawl and irresponsible loss of our natural resources and habitat. We are concerned that in fact the QSA and its implementation will have growth-inducing effects, both by increasing the reliability of supply and by opening up the possibility of increased supply. Please clarify the relationship of the QSA to the addition of new SDCWA water supplies referred to in the DEIR.

2

In its discussion of potential growth-inducing impacts, the DEIR acknowledges SDCWA’s joint aqueduct feasibility study, but states that SDCWA could construct a new aqueduct to carry Colorado River water in the absence of the QSA. (DEIR, p. 6-9.) Please explain how this could occur in the absence of the QSA and/or the IID/SDCWA Water Transfer Agreement.

3

The DEIR’s Cumulative Impacts discussion also fails to include these potential San Diego County projects and impacts. Section 4.0 of the DEIR lists numerous regional water supply and other related projects in the region in order to evaluate cumulative impacts. We submit that a new San Diego conveyance facility and/or a San Diego/Baja joint aqueduct is a reasonably foreseeable probable future project, as described above, for purposes of the cumulative impacts analysis required by the California Environmental Quality Act (CEQA). These facilities should be included and their impacts disclosed in the DEIR’s cumulative impacts analysis.

4

QSA PEIR
March 14, 2002
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Please let me know if you have questions about SOFAR's concerns. Please also include me on your mailing list for this EIR. We look forward to your response.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Christy H. Taylor

cc: Duncan McFetridge, Save Our Forest and Ranchlands

[P:\SOFAR\Mat7\sofarletter.wpd]

**Shute, Mihaly & Weinberger, LLP, on behalf of Save Our Forest and Ranchlands (SOFAR),
March 14, 2002**

1. The Proposed Project would require no additions or expansions to SDCWA’s water delivery and storage system. As noted in section 6.2.4.2, SDCWA is undertaking the Regional Colorado River Conveyance Feasibility Study to analyze the feasibility of constructing a separate conveyance system to allow IID transfer water to be imported without using MWD’s Colorado River Aqueduct. If the Proposed Project is not implemented, the PEIR states in section 6.2.4.2 that SDCWA and IID would pursue their transfer agreement as a separate project. If SDCWA found a separate system to be feasible and negotiated a source of water, it could be implemented. As noted in the comment, this project would be subject to a separate environmental review. Also refer to response no. 4 below.
2. Please see the response to CDFG comment 42. The comment cites a SOFAR objective that new water supplies should not be developed absent sound land use plans. However, the QSA maintains historic and current reliability of Colorado River water supplies to the MWD/SDCWA service areas, rather than creating a new supply. The San Diego Association of Governments (SANDAG) growth projections that SDCWA uses for water supply plans take into consideration local government general plans.
3. Please refer to response no. 1 above.
4. The construction of a pipeline from the Imperial Valley to the San Diego region is addressed as an alternative to the Proposed Project in the PEIR. Although a feasibility analysis has been conducted either for a specific pipeline or an SDCWA/Baja California joint pipeline, the potential for construction of either one of these facilities is speculative at this time.

INDIVIDUALS

Comments and Responses

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March 7, 2002

QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, CA 93101

RECEIVED
MAR 11 2002
SAIC SANTA BARBARA

Re: Public Comment on Draft EIR/EIS

Dear Sirs:

We have lived at the Salton Sea for over 6 years and have attended a number of symposiums and meetings about the problems facing the Sea, possible solutions and the impacts of various proposals on Imperial County. Now the proposed transfer of water to three other water districts has significantly impacted the possibility of implementing a plan to maintain the Salton Sea as a viable body of water and important habitat on the Pacific Flyway. We find several troubling aspects of the QSA in the EIR/EIS. We would like to address these concerns and then make a request for some modification to the QSA.

Concerns:

First is the forced transfer of water from the poorest county in California to some of the richest in order to promote their further "growth and development." There is neither any demand that they enforce strict water conservation as IID is mandated to do, nor are they mandated to seek alternative sources of water such as desalinating sea water. Without mandating conservation and developing other sources of water, it is inevitable that SDCWA and MWD will be back to take more Imperial County water within 20 years, if not sooner, even though it is supposed to be a 75 year agreement.

Having been born and raised in Los Angeles County, we are well aware of MWD's ability to take water from other areas instead of either containing their own sprawling growth or developing their own source of water from the ocean. The desalination project in Florida has proven that a reasonably priced water supply can be obtained by desalination. CVWD knows it has a water supply problem, but still encourages growth and development of projects which are high water consumers. Yet this QSA completely ignores the obvious problem with Southern California continuing to "develop and grow" knowing that indigenous water is not available to support it. All the burden for supplying coastal counties with water is placed on IID conservation. This is patently unjust and short-sighted, even if expedient for the short term.

Second, the objectives for IID listed under ES-5 include: "Provide economic stimulus to Imperial Valley agriculture and surrounding community." Under ES-6 the Habitat Conservation Plan Objectives for IID include "Minimize and mitigate impacts of take of covered species as a result of the IID/SDCWA transfer." This brings us to the problem

of the Salton Sea. PL 105-372 says no additional Colorado River water can be purchased to replace that lost by IID conservation. As a result the Sea is expected to be destroyed in eleven years by diking off the north and south ends. The resulting ponds would receive all the inflow available to provide endangered species habitat. The rest of the Sea will be allowed to dry up and turn into an Owens Valley-like soup of brine shrimp and brine flies. With an estimated 70,000 acres of sea bed exposed, the PPM-10 count will skyrocket in the adjacent area and it will become uninhabitable by the people currently living in the area. Can you reconcile this with the stated purpose of the QSA to transfer water for the benefit of human, rather than agricultural use? It is not going to benefit humans in the Imperial Valley. This situation will certainly not "provide economic stimulus to Imperial Valley agriculture and surrounding community." Indeed, it will preclude any "economic stimulus" to Imperial County. Again, we see the wealthy coastal cities benefiting from the decline of the poorest county in California. How can any project for restoring the Salton Sea be implemented if all sources of water to support the Sea are given away in the QSA and/or made impossible to obtain by terms of PL 105-372?

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Third, the EIR/EIS does not address the U.S. Treaty obligation to maintain the Sea as part of the Pacific Flyway, nor the possible effects of any remedies which might be taken at the Salton Sea. Since diking off the north and south ends for habitat is the currently suggested solution, there should be consideration given to the effect of a major earthquake along the San Andreas and other fault lines in and around the Sea. A major earthquake which fractured a dike would bring disaster to the fish in the impounded areas, and therefore, many birds which rely on them. This would seem to violate the Habitat Conservation Plan Objectives for IID in ES-6. Has the cost of building dikes been figured? It also seems doubtful that the two ponds could support hundreds of thousands of white pelicans, estimated to eat 5 - 7 tilapia per day for 5 months, to say nothing of the cormorants, herons and other fish-eating birds dependent on the Sea. Of course, the endangered brown pelicans are here year around. It is obvious from reading the EIR/EIS that IID will be granted a permit to kill endangered species any time it asks for one and there is no mention of SDCWA or MWD responsibility for killing endangered species.

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Fourth is the question of maintaining the recreational resources of the Salton Sea. Has the cost to the State, and private individuals been calculated? It appears IID may be exempted from paying any of those costs. The cost to move the camp sites and docking facilities every few years as the sea dries up and building interpretive centers will be very significant. Then there is the question of who would want to camp or fish by a body of brine shrimp and flies. There will be no boating on that soup, no annual races of personal water craft, which bring significant money to the State and Riverside County, leaving only bird watchers and some fishermen who are willing to endure the flies as recreational opportunities. The tilapia will survive in the diked ponds, but the prime sport fish, the orange mouth corvina, probably will not.

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Fifth, the horror stories about how "polluted," "poisoned" and "dying" the Sea is are simply not true as the words are commonly understood. Many of the stories about supposed problems of the Sea have apparently originated in the Los Angeles area. The

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New River is contaminated with waste when it leaves Mexico, but not when it reaches the Salton Sea. Nature cleans the toxins over the 60 mile length of the river. It took several years of intensive scientific studies to prove what people who live around the Sea have always known. The Sea is not polluted. It has never been closed to human use for swimming due to health concerns. It is actually one of the most productive fisheries in the world and the fish are safe to eat. There are no toxic selenium or other chemicals in the water. The fish die for lack of oxygen, not from being poisoned. If a reasonable inflow can be maintained, there is real scientific evidence, that the Salton Sea can be maintained as a healthy ecosystem. The Salton Sea Authority has been trying for 7 years or more to find a viable, affordable way to prevent further degradation of the Sea by increased salinity. Their efforts have been hampered by lack of knowledge about the true condition of the Salton Sea. Now the water transfer is causing additional problems in figuring the costs of possible actions.

9

Sixth, ES-42 states that adverse change to regional economic conditions would be accelerated by up to 11 years because of the water transfer. This will mean a loss of the majority of recreation-related economic activity, decreased economic activity and downward pressure on property values. By taking water from IID and the Salton Sea, the Imperial Valley will have its own economic development effectively prevented, both for lack of water and because of the deteriorated environment. The report mentions employment loss by minority farm laborers, but not loss by minority businesses. Nor does it address losses by all businesses and property owners in Imperial County except to acknowledge property values will drop. Since many people living around the Sea are senior citizens with low incomes this problem really needs to be considered.

10

Conclusions and recommendations:

It is obvious that the water transfer will be pushed through by those receiving the benefit of it. To us it is equally obvious that those receiving the benefit should be mandated to mitigate the effects of the transfer on Imperial County, not just on certain "endangered species" which will be legally killed anyway.

11

First, this mandate should require those agencies benefiting from the water transfer to implement strict water conservation so that they can continue to live within the water allotment provided by this transfer for the next 75 years. IID is being forced to conserve, so should they.

12

Second, those agencies receiving water should either return their reclaimed water to the Sea or provide a new source of water to maintain the Sea as a whole near its current level. This might mean desalinating ocean water to pipe to the Salton Sea. Since these benefiting agencies have much more influence in congress than IID, they have a much better chance to have the U.S. government help with the cost.

13

Third, the coastal communities of Southern California should be mandated to desalinate ocean water as a long term source of their water so that they will not come back to IID or Northern California for more water in 20 years or so.

14

Fourth, since the money being paid for the transferred water is going solely to pay for IID conservation and/or payment to farmers not to farm, there should be additional mitigation to the County of Imperial for the detrimental effects of loss of business and property tax revenues as values decline. Without water available for "development," within Imperial County the poorest county will simply become poorer. Possibly the water agencies benefiting from this transfer are waiting for that so they can take all IID water when the County becomes bankrupt. | 15

Fifth, the "Water Wars" have been raging in California for over 75 years. MWD has known for many years that it would have to curtail its use of Colorado River water, but has done nothing in all those years to develop a permanent, stable water supply for itself. The time has come to find a permanent solution. This must address the fact that the Southern California coast is an irrigated desert environmentally. The coast is the preferred place for humans to live. There is no way our government can prevent the population expanding. Humans require fresh water. Therefore, an unlimited source of water must be developed for the California coast. This water must not be taken from other populated areas. The only solution that we can see is desalination of ocean water and that must be started immediately, not 20 or 50 years from now. | 16

Thank you for your consideration of our concerns and suggestions.


Floyd D. Overholt
1318 Beach Club Dr.
Thermal, CA 92274-6306


Margot S. Overholt

Floyd and Margot Overholt, March 7, 2002

1. No issues were raised regarding the content of the PEIR; however, it should be noted that the current Urban Water Management Plans prepared by each of the co-lead agencies include water conservation measures and alternative water sources. Specific types of measures that are being implemented in these service areas include: water conservation, including the use of Best Management Practices (e.g., financial incentives for the installation of low-flow toilets and high-efficiency appliances; distribution of low-flow showerheads; residential surveys, leak detection programs, landscape programs, public information programs, school education programs, water waste prohibitions, etc.) and Agricultural Efficient Water Management Practices. Water recycling (the treatment and disinfection of municipal wastewater to provide a water supply suitable for non-potable reuse) is also a key component of these Urban Water Management Plans, which include provisions for low interest loans, financial assistance, and public education.
2. Please note that the referenced objectives for IID are from the Draft IID Water Conservation and Transfer Project EIR/EIS, not the QSA PEIR. The goals and objectives of the Proposed Project are listed in section 2.2. They do not specifically state for what purposes the water should be used (e.g., human vs. agricultural use). Uses of the water are to be determined by the individual water agencies consistent with the terms and conditions of their water delivery contracts with Reclamation. The goals and objectives of the Proposed Project also do not include “providing economic stimulus to Imperial Valley agriculture and the surrounding community.” These, too, are from the IID Water Conservation and Transfer Project EIR/EIS, not the PEIR for the QSA. The PEIR (section 3.13.2.3) acknowledges that jobs could be lost within the IID service area and that business output could decline, depending on how conservation is implemented.

The issues involving the restoration of the Salton Sea are complex and are being addressed by the Salton Sea Restoration Project, which is authorized by PL 105-372 (refer to section 1.5 of the PEIR). The impacts of alternative methods of restoring the Sea will be evaluated in an Environmental Impact Statement/Environmental Impact Report prepared by the U.S. Bureau of Reclamation and the Salton Sea Authority. This analysis will address issues associated with PL 105-372.
3. We are unaware of a treaty that specifically cites a U.S. obligation to maintain the Salton Sea as part of the Pacific Flyway. The PEIR does, however, address the impacts of the Proposed Project to the biological resources of the Salton Sea in section 3.2.2.3, including impacts to migratory birds. Impacts to fish-eating birds were considered significant, and a mitigation strategy has been identified to reduce impacts of the Proposed Project to less than significant levels. Issues associated with the long-term maintenance of the Salton Sea are being addressed through the Salton Sea Restoration Project.
4. Please note that Mitigation Strategy 1 (development and maintenance of foraging ponds) has been removed from consideration due to USFWS and CDFG concerns regarding the potential for the ultimate success of this approach and the absence of a suitable back-up position if the foraging pond approach failed.
5. See response no. 4 above.

- 6-7. This comment appears to refer to the fact that IID has applied for incidental take permits. As noted in the PEIR, IID has prepared a draft Habitat Conservation Plan in support of its application for such permits in conformance with the federal and California Endangered Species Acts. This plan will provide strategies for the management of sensitive species, as well as measures to mitigate any potential impacts. Incidental take permits are issued only after rigorous environmental analysis has been completed for specific projects. IID and SDCWA are applying for such permits because the actions that would result in potential take of threatened or endangered species would result directly from actions within their service areas.
8. The PEIR identifies significant recreational impacts at the Salton Sea (section 3.6.2.3). Recreational costs would be incurred in the course of mitigating Project impacts and thus assumed by the appropriate entity as identified in the Mitigation, Monitoring, and Reporting Program required to be prepared by the co-lead agencies. Please refer to Defenders of Wildlife, March 26, 2002, response no. 3 regarding the cost of mitigation.
9. No response is required because no issues were raised regarding the content of the Draft PEIR.
10. Please see response no. 2 above and Antonio Rossman, March 26, 2002, response no. 11.
11. Where feasible, mitigation measures have been identified in the PEIR for all significant impacts, not just impacts to endangered species.
12. Please refer to response no. 1 above.
13. This comment does not specifically address the analysis included in the Draft PEIR. Please note that the impacts of desalination were considered under the no-project alternative (section 5.4). The use of this technology would not be technologically or economically feasible at this time given the volume of water being considered and the timeframe of the Project. This has been clarified in the Final PEIR. It also was found not to meet the Project objectives (section 5.3.2). Use of reclaimed water to stabilize the water elevation of the Salton Sea is not feasible. It would involve the construction of extensive pipelines, which would be costly and have considerable environmental impacts (refer to the discussion of pipeline construction in Chapter 5 of the PEIR). Water also would have to be treated to adequate standards so as not to increase pollutant loads to the Sea. This would be very costly.
14. Please refer to response no. 13.
15. The loss of business and property tax revenues are not considered environmental impacts in this PEIR (refer to Antonio Rossman, March 26, 2002, response no. 11).
16. Please refer to response no. 13.

Dessert Shores, California

February 28, 2002

QSA PEIR
Science Applications International Corporation
816 State Street, Suite 500
Santa Barbara, Ca 93101

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MAR 05 2002

SAIC SANTA BARBARA

Agreement with Southern California water agencies does not include replenishing the Salten Sea with water lost to the sea due to the water transfers. | 1
This replenishment to maintain the desirable sea level should be included.
The restoration of the Salten Sea level is best replenished with ocean water.
A portion of the saltier water should be returned to the ocean to maintain the salinity acceptable for fish survival.
Construction of pipe lines to the ocean and a pumping station would be required.

Respectfully,

John Pavlich (760) 395-0317



John Pavlich, February 28, 2002

1. The PEIR does contain a mitigation measure (Mitigation Strategy 2, described in section 3.2.3) that would maintain the level of the Salton Sea for a period consistent with that projected under the No-Project (Future Baseline) conditions. Please note that the impacts of desalination were considered under the no-project alternative (section 5.4). The use of this technology would not be technologically or economically feasible at this time given the volume of water being considered and the timeframe of the Project. This has been clarified in the Final PEIR. It also was found not to meet the Project objectives (section 5.3.2). As noted in this comment, constructing pipelines and pumping stations would be required, which also would have considerable environmental impacts (refer to the discussion of pipeline construction in Chapter 5 of the PEIR).