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November 14, 2002

REPLY TO: Riverside Office

MEMO

TO: COACHELLA VALLEY WATER DISTRICT
BOARD OF DIRECTORS

FROM: GERRY SHOAF & STEVE ABBOTT

RE: THE QUANTIFICATION SETTLEMENT AGREEMENT
AND RELATED AGREEMENTS

BACKGROUND

The Problem

California is using too much Colorado River Water. Under the Boulder Canyon Project Act, the California Limitation Act and the Supreme Court Decree in Arizona v. California, California's base entitlement to Colorado River water is limited to 4.4 million acre feet (MAF) per year. The Boulder Canyon Project Act gives the Secretary of the Interior discretion to redistribute unused entitlement of a lower basin state (California, Nevada and Arizona) to or among the other lower basin states and to deliver

surplus water beyond entitlements, when available. That authorization has enabled California to divert 800,000 acre feet or more beyond its annual entitlement in recent years, but, as Arizona and Nevada have reached the diversion of their full entitlements, the upper basin states (Colorado, Utah, Wyoming, and New Mexico) have taken the position that California cannot be allowed to use their unused entitlements and must find a way to reduce its diversions to the 4.4 MAF limit. The Secretary has agreed with that position.

Under the 1931 California Seven Party Agreement which divided the 4.4 MAF among California agencies, the agricultural agencies hold the first three priorities totaling 3.85 MAF. Metropolitan Water District of Southern California ("MWD") holds the fourth priority which is fixed at 550,000 afa (acre feet per year) which is the balance of California's 4.4 MAF. Of importance is the fact that MWD's Colorado River aqueduct's capacity is 1.3 MAF per year. If California is limited to 4.4 MAF, MWD will be short about 700,000 afa at a time when its Northern California supplies are already being reduced to satisfy environmental needs in the Delta.

The Solution

There are a number of pieces to the solution, but the key involves transfers by ag to urban users; taking water that ag is currently using but can do without through conservation or fallowing and sending it to urban users.

Programs that have been or are being undertaken or that are under consideration to offset the shortfall include the 1988 IID-MWD Conservation Agreement, the MWD-PVID Land Fallowing Program, the IID-San Diego County Water Authority Transfer

Agreement, and various conjunctive use programs that involve underground storage of water in wet years for use in dry years. However, it will take a number of years for enough of these programs to be implemented to get California's use down to 4.4 MAF.

The other basin states and the Department of the Interior have agreed to allow California up to fifteen years to implement these programs through a "soft landing" process known as the Interim Surplus Guidelines ("ISG") under which the Bureau of Reclamation ("BOR") will release enough water out of storage in Lake Mead to keep MWD's Colorado River aqueduct full, depending upon the level in Lake Mead. However, this agreement is contingent upon verification that California is in fact making progress toward its ultimate goal of reducing diversions to 4.4 MAF, and the first requirement toward this end is that the Quantification Settlement Agreement ("QSA") and related agreements be signed by December 31, 2002.

The reason that so much emphasis is being placed on execution of the QSA as an indicator that California will in fact reduce its diversions is that the QSA undertakes two very important elements of the reduced diversion process: first, it provides for ag to urban transfers of nearly 300,000 acre feet (200,000 acre feet transfer to San Diego County Water Authority ("SDCWA") and 93,000 in canal lining conserved water from IID and CVWD to MWD); secondly, it provides a baseline against which transfers by IID can be measured by quantifying IID's Third Priority allocation at 3.1 MAF per year.

The reason this is important to CVWD and to MWD is that currently there is no baseline or fixed entitlement which transfers would be charged against and deducted from. The

California ag agencies having contracts with the Secretary for Colorado River water do not have fixed or quantified entitlements; PVID is entitled to enough water to irrigate 104,500 acres, and the Yuma Project gets enough to irrigate up to 25,000 acres; subject to the restriction in the 1934 Compromise Agreement with CVWD, it is limited to the amount of water it can put to reasonable and beneficial use within its service area, IID has first priority at the balance of the 3.85 MAF allocated to agriculture. Without a baseline, IID could claim to be conserving the water it proposed to transfer, transfer the water, and still continue to divert the same amount of water diverted before the transfer. With a baseline in place, the amount of each transfer would be subtracted from that baseline and IID could only divert what is left.

Said another way, the QSA removes the threat that IID could claim it is putting the lion's share of the Third Priority ag water to beneficial use in its service area, leaving little, if any, for CVWD's use.

Implementation

Neither the QSA nor any of the related agreements could be executed before the required state and/or federal environmental reviews were done. This has now been pretty much accomplished although it appears that addenda will need to be prepared for both the QSA EIR and the IID/SDCWA Transfer EIR/EIS to address changes in mitigation. More about this in Section 10 "Overview of Environmental Compliance" below. The questions remaining are largely policy questions, i.e., whether to go through with the QSA and all of its subparts as currently proposed. Execution of the QSA by December 31 will satisfy one of the key requirements of the Secretarial Implementation Agreement and of the Interim

Surplus Guidelines even though the QSA will or may not become "effective" until later, when all of the conditions precedent to its effectiveness have been satisfied. Examples of such conditions include (1) execution of the Secretarial Implementation Agreement; (2) State Water Resources Control Board approval; (3) effectiveness of the IID-SDCWA Transfer Agreement; and (4) final and favorable termination of any environmental or validation litigation.

AGREEMENT SUMMARIES

A. Overview

By way of overview, the QSA is the master or umbrella agreement from which some 36 or 37 or more other agreements flow.

Said another way, the QSA sets the parameters within which, and establishes terms upon which all the other, more detailed agreements operate. The signatories to the QSA are IID, MWD, and CVWD; SDCWA is not a signatory because it is not a Colorado River Contractor with the Secretary, but it is involved and is protected by the requirement that its Water Transfer Agreement with IID must become effective before the QSA becomes effective.

The categories and, to some extent, the relationships of the various agreements are set out next, followed by summaries of the general purpose and key provisions of the agreements to which Coachella is a party or which affect Coachella's water supply; in addition, there is a summary of the Interim Surplus Guidelines which is a policy adopted by the Department of the Interior rather than an agreement.

The QSA has four major functions: (1) it establishes the amounts of water that the three signatories will receive and/or give up, i.e., the "water budgets"; (2) it keys the term of the

overall QSA to the term of the IID/San Diego transfer; (3) it sets out a list of specific agreements that cut across all other agreements; and (4) it sets out a list of things that must occur (conditions precedent) for the deal to go forward.

Next in order of logical sequence are the "acquisition agreements" that contain the specific provisions governing how and how much water will move and the terms and conditions of that movement, including financial considerations. These agreements are between IID and CVWD, MWD and CVWD, and IID and MWD.

Next is the very important Secretarial Implementation Agreement by which the Secretary of the Interior agrees to distribute and deliver Colorado River water according to the provisions of the QSA and related agreements during the term of the QSA, known as the "quantification period."

Next is a document that is not an agreement, but rather is a Record of Decision by the Secretary of the Interior, the Interim Surplus Guidelines ("ISG") which set out the conditions for the 15-year "soft landing" for California as well as the procedures under which the River and consequently Lake Mead storage will be operated during that period, largely depending upon lake levels.

Related to the ISG are agreements between MWD and the State of Arizona and MWD and the Southern Nevada Water Authority relating to the risks of shortage caused by taking water out of Lake Mead for MWD's benefit pursuant to the ISG.

Next are the IID/SDCWA Transfer Agreement, amendments thereto, and related agreements between MWD and San Diego regarding transportation of that water.

Next is the Protest Dismissal Agreement filed with the State

Water Resources Control Board. CVWD and MWD have consistently taken the position that the State Water Resources Board has no jurisdiction over the water transfer per se but rather only over IID's waste of water. IID, on the other hand, insisted on State Board approval as a condition precedent to the QSA, largely because it hoped to obtain a favorable ruling that its water is put to beneficial use which will give it protection against suit by Coachella, MWD, and/or the environmental community. The Protest Dismissal Agreement is a document which generally states that Coachella and MWD will withdraw their protests if, and only if, the State Board approves the transfer while finding that the approval is not in any way precedent setting for any other transfer by IID specifically as that approval relates to beneficial use and/or application of state rather than federal law.

Next is an Environmental Compliance and Cost Sharing Agreement between all four agencies which recognizes the self-imposed \$30,000,000 cap on IID's exposure to environmental mitigation costs and which provides for the three other agencies to share costs beyond that amount.

Next are the amendments to the 1988 IID-MWD Water Conservation Agreement and related agreements.

Next is a series of agreements related to the lining of the unlined portions of the All-American and Coachella Canals regarding construction, environmental, financing and disposition of the water conserved thereby.

Next are three agreements between CVWD and MWD relating to CVWD's sharing a portion of MWD's State Water Project entitlement and a Conjunctive Use Program whereby MWD would store water in

Coachella's groundwater basins.

Next, and last for purposes of this memo, are two agreements between CVWD and IID, the first involving settlement of the Salton Sea flooding cases, indemnification for settlements and reimbursement for expenses and ongoing dike maintenance and repair, and the second agreement relating to a conjunctive use program whereby IID could store water in the Coachella groundwater basins. The Salton Sea Settlement Agreement is not particularly important as an element of the overall QSA, except as one element of the global settlement between IID and CVWD of all issues (except the power issues). The Salton Sea Agreement by itself, however, is a big deal because, if signed, it will settle all past and future apportionment of damage issues between the two District, provide for a sharing of property ownership or flooding easements to provide protection against claims for damages to those properties, and would provide for ongoing dike maintenance and repair.

Next is a summary of the particular agreements or groups of agreements.

B. Summaries of Individual Agreements or Documents

1. Quantification Settlement Agreement ("QSA")

a. Water Budgets

- (1) IID - will cap its Priority 3a entitlement at 3.1 MAF and transfers and obligations to provide water will be subtracted from this amount. At present, this includes the 105,000 to MWD under the 1988 Agreement, the up to 200,000 to San Diego County Water

Authority, the 100,000 to Coachella, and up to 11,500 acre feet to help satisfy Indian PPR's when necessary, and 67,000 acre feet salvaged from lining the All-American Canal.

This will reduce the water available for IID's own use down to a little over 2.6 MAF, its PPR guaranteed minimum.

- (2) **CVWD** - Coachella's entitlement is fixed at 330,000 afa, but it will also receive (and give up) water as set out in the Acquisition Agreements with IID and MWD, i.e., it receives 100,000 from IID and 55,000 from MWD, but gives up 26,000 in canal lining water and up to 3,000 to help satisfy Indian PPR's, when necessary. The net result is a water budget totaling 456,000 acre feet per year, not including surplus when available under Priorities 6 and 7.

- (3) **MWD** - MWD's entitlement is capped at 550,000 for Priority 4, and 662,000 for Priority 5 (if and when available since Priority 4 rounds out California's 4.4 MAF entitlement); MWD is responsible for satisfaction of Indian PPR's over 14,500, and also guarantees that the total use by the first two priorities (PVID and Yuma Project) will not exceed 420,000 acre feet per year; MWD must pay back any overage in use beyond that amount but, on the plus side, gets to use any unused water within that "cap."

b. **Term** - The term of the QSA starts with the "effective date" of the IID/SDCWA transfer and lasts for 75 years ("Quantification Period"), unless sooner terminated. That termination will occur if the IID/SDCWA transfer terminates before the 75 years. The latter agreement is actually for 45 years with a 30-year renewal at the option of either party, but it ends if either (1) the renewal would be a material detriment to either party, or (2) the transfer is stopped by a court.

c. **Accommodations During Quantification Period**

(1) The "Interim Period" under the Salinity Control Act requires that CVWD repay a prorata share of the 40-year repayment of the cost of the 1978 Coachella Canal Lining, starting when the United States is unable to meet water orders. Article 4, Paragraph 4.4 of the QSA provides that IID, MWD and CVWD will limit orders to water available to avoid triggering that event and repayment. This potential repayment risk will be virtually eliminated by an amendment to the 1978 Canal Lining Agreement between the United States and Coachella which provides that the "interim period" shall continue (a) so long as the San Luis Rey Bands receive the 16,000 acre feet from the lining of the All-American and Coachella Canals which is intended to be a permanent situation, and thereby extend beyond the 40-year repayment period, or (b) if planning, design, and construction of the canal lining is underway.

(2) Coachella agrees in Paragraph 4.5 to use water obtained from IID and MWD only in or for the benefit of Improvement District No. 1 and agrees to waive any further claim to additional water under Priorities 3 or 6 during the Quantification Period. However, CVWD's Contract with the Secretary for Surplus Water is not affected thereby, i.e., CVWD continues to get surplus water.

(3) CVWD agrees to provide storage capacity for an IID conjunctive use program, if space is available.

(4) MWD agrees that if IID or CVWD is shorted as a result of the Interim Surplus Guidelines ("ISG") and is forced to overrun, MWD will pay back the overrun for the other agencies, up to the amount MWD receives by reason of the ISG. (Paragraph 4.10.)

MWD also agrees to cover any shortage that Southern Nevada or the State of Arizona suffers as a result of the ISG, and IID and CVWD agree to make their shares of Priorities 6 and 7 surplus available to help MWD with such repayment, if necessary. (Paragraph 4.12.)

(5) Peace Treaty - IID and CVWD agree not to challenge each other's water use practices (reasonable and beneficial use) except in times of shortage (more in the IID/CVWD

Acquisition Agreement on this point), and CVWD won't challenge transfers by IID so long as CVWD receives its QSA water.

d. Conditions Precedent

These are things that have to occur or be accomplished before the QSA becomes effective, even though the QSA has already been signed. Some of these have already been satisfied. They include the following:

- (1) Environmental reviews and arrangements for mitigation with respect to all transactions requiring same.
- (2) Adoption of ISG by Interior. (Done)
- (3) Adoption of Inadvertent Overrun and Payback Program ("IOP") by Bureau of Reclamation ("BOR"). (Done)
- (4) Approval by State Water Resources Control Board ("SWRCB") that meets the requirements of the Protest Dismissal Agreement ("PDA") described below. (Done)
- (5) PVID waives call rights on canal lining water, any increased use on the Mesa, and any right to Priority 6 surplus water during the Quantification Period or waived by MWD.
- (6) Agreement reached whereby San Luis Rey Bands will receive 16,000 afa of canal lining

water.

- (7) All necessary arrangements have been made for deliveries of water budget components and IID/SDCWA transfer water.
- (8) DOI has appointed a panel to look into Yuma Island water use issues. (Done)
- (9) DOI approves IID/SDCWA transfer as modified to charge transfers against IID's 3.1 MAF cap.
- (10) IID and CVWD have settled Salton Sea flooding case issues.

2. Acquisition Agreements

a. IID/CVWD

- (1) **Quantity** - In addition to CVWD base entitlement to 3d Priority water of 330,000 afa, CVWD will ultimately receive an average of 100,000 afa from IID, starting with 4,000 afa in 2008 and ramping up periodically over a period of about 20 years to reach a maximum delivery rate of about 103,000 afa;
- (2) **Price** - The price for the first 50,000 is \$50.00 per acre foot, plus \$3.50 per acre foot for environmental mitigation costs; the next 20,000 acre feet will cost \$125.00 per acre plus the \$3.50 acre foot environmental surcharge, but MWD will reimburse CVWD \$75.00 per acre foot, so the net cost to CVWD

remains at \$53.50 per acre foot; the last 30,000 acre feet will cost \$125.00 per acre foot plus the \$3.50 per acre foot environmental surcharge, but MET will reimburse Coachella \$42.50 per acre foot, leaving a net cost to Coachella of \$86.00 per acre foot.

- (3) **Unused Water** - CVWD has the option to refuse, delay or slow the deliveries in which case, MWD and San Diego have an option of buying up to 20,000 acre feet of that water over a three-year period (in return for picking up any environmental mitigation costs related to the CVWD water deliveries beyond CVWD's \$3.50 per acre foot). MWD wants to renegotiate this point. (Under discussion)
- (4) **MWD Obligation After Year 45** - MWD assumes the obligation of supplying the second 50,000 afa to CVWD in place of IID, at the same net cost to CVWD.
- (5) **Loan to IID** - CVWD will loan \$50,000,000.00 to IID for construction of capital facilities required to conserve the water for CVWD. The rate of interest and form of security are still under discussion. (Under discussion)
- (6) **Shortage Sharing** - If total 3d Priority water available to IID and CVWD is less than their combined entitlements of 3.43 MAF, they will try to reach agreement on allocating the

shortage but failing that, will share at 75% of water available for IID and 25% for CVWD, pending the outcome of any litigation, subject to the requirement that IID will be guaranteed its PPR's to 2.6 MAF.

(7) **Retransfer** - CVWD will waive the right to retransfer any water received from IID.

b. **MWD/CVWD Acquisition Agreement, Amendment to 1989 Approval Agreement, and Transfer and Exchange Agreements**

- (1) MWD will provide the second 50,000 acre feet CVWD gets from IID after year 45 for the same price.
- (2) In place of the 50,000 acre feet that MET has to give up to CVWD under the 1989 Approval Agreement when CVWD can't get enough 3d Priority water to meet its needs, MWD will now automatically provide CVWD with 20,000 acre feet per year unless CVWD can get enough Priority 6 surplus water to meet its needs.
- (3) MWD will sell 35,000 acre feet of its State Water Project entitlement to CVWD for \$60.00 per acre foot and then will trade Colorado River aqueduct water to CVWD for that State Water Project ("SWP") water.
- (4) There is a second Transfer and Exchange Agreement between MWD, CVWD and Desert Water Agency ("DWA") under which MWD will sell 100,000 acre feet of its SWP entitlement to

CVWD and DWA, subject to an agreement that the latter two will only take the water one-half of the time, in wet periods, which means the deal is really for 50,000 acre feet. Price and terms are being negotiated. This water is not included in CVWD's water budget. (Under discussion)

3. Secretarial Implementation Agreement

In this Agreement, the Secretary recognizes the provisions of the QSA and related agreements that have to do with movement of water per the various water budgets and the IID/SDCWA Transfer Agreement. The Secretary finds in this Agreement that the water budget components of the QSA and related agreements will benefit the Secretary's management of the River and agrees to deliver Colorado River water during the Quantification Period according to the terms of the QSA and related agreements.

One of the issues not yet resolved is the extent to which DOI agrees that IID is putting all its water to reasonable and beneficial use and whether Interior will find it necessary to review that use now or at any time during the Quantification Period. Lastly, a related issue is whether Interior will agree that following "is a permitted use within IID's Section 5 Contract."

4. Secretary's Record of Decision - Interim Surplus Guidelines

The development of the operational guidelines for the Colorado River reservoirs known as the Long Range Operating Criteria ("LROC") assumed that there would be little if any surplus and therefore focused on avoiding shortages by holding as much water in storage as possible. In wet years, this strategy

resulted in more flood control releases, above downstream needs and ability to store the water. In dry years, releases were not made even though the water could be beneficially used and even though the likelihood was that flood control releases would be made in excess of downstream needs or ability to store the water during the subsequent 15 years.

This strategy does not maximize beneficial use because it does not take advantage of the storage available with minimal risk of shortages.

The ISG also referred to as "River Re-operations" are designed to optimize use of existing storage to make the maximum amount of surplus available while keeping risk of shortages to a minimum. These guidelines allow California the "soft landing" in implementing the plan to reduce diversions to 4.4 MAF.

In general, this is accomplished by using Lake Mead levels as the "trigger" for different amounts and types of releases, rather than using avoidance of flood control releases as the trigger:

- a. **Normal and Shortage Conditions** will prevail when Lake Mead is at or below elevation 1,125 and under these conditions, all users will be limited to basic entitlements.
- b. **Surplus Conditions**
 - (1) **Partial Domestic Surplus** - When the surface elevation is between 1,125 and 1,145, MWD will receive 1.212 MAF surplus water to keep the Colorado River aqueduct full, reduced by the amount of its basic entitlement (550,000

af) and other supplies.

- (2) **Full Domestic Surplus** - When the Lake is above 1,145 and below 70 R Strategy (flood control release avoidance), MET will receive 1.250 MAF surplus water less its basic entitlement.
- (3) **70 R Strategy** - The Secretary shall quantify and allocate the surplus available and deliver California's share of the surplus to first meet MWD's domestic needs and offstream storage uses and then satisfy Priorities 6 and 7 and other surplus contracts.
- (4) **Flood Control Releases** - Releases will be made to satisfy all beneficial uses within the United States, including unlimited offstream banking.

Unless earlier terminated, the ISG will remain in effect through preparation of the 2016 Annual Operating Plan, at which time the 70 R Strategy will again become the basis for operating guidelines (unless the ISG term is extended).

The ISG is premised upon the assumption that California will make significant progress toward reducing its use to 4.4 MAF over the 15 years and benchmarks (reductions in California's ag usage plus 14,500 afa for Indian PPR use) are built into the ISG to make sure this is the case. If California fails to meet a benchmark, the ISG will be suspended until that benchmark is met.

In general, in most years, this would mean that California's total diversions would be limited to 4.4 MAF. The benchmarks

are:

2003	-	reduce to 3.74 MAF
2006	-	reduce to 3.64 MAF
2009	-	reduce to 3.53 MAF
2012	-	reduce to 3.47 MAF

Note that the 1988 IID-MWD Water Conservation Agreement which is currently saving about 105,000 afa nearly satisfies the 2003 benchmark.

The ISG also assumes that MWD will (and it has) enter into agreement with Nevada and Arizona whereby MWD literally guarantees that neither will suffer a shortage as a result of DOI's use of the ISG.

5. **IID/SDCWA Transfer Agreement**

- a. **Term** - Starts in 2003; initial term is 45 years with a 30-year renewal term.

- b. **Delivery Schedule** - IID will deliver a minimum of 1.0 MAF over 15 years starting with 10,000 acre feet in the first year and ramping up at an additional 10,000 acre feet per year through year 11 when it plateaus at 100,000 af; deliveries stay level until year 16 when they increase to 130,000 af and then to 160,000 af in year 17, 190,000 in year 18, and 200,000 each year thereafter. IID can offer to deliver greater amounts during the ramp-up period, up to a maximum of 200,000 afa.

- c. **East Mesa** - If the East Mesa well field can be developed and San Diego will pay the cost, IID will increase deliveries by two-thirds of each

acre foot developed and will use the remaining one-third acre foot to reduce fallowing.

- d. **Price** - Starts at \$258.00 per acre foot and increases per a formula.
- e. **PVID Makeup Water** - The original IID/SDCWA deal called for total deliveries during the first 15 years of 2 MAF, or more; to help with the shortfall (which allows IID to fallow less land to make the deal easier to sell locally), MWD will make up to 390,000 acre feet available during that 15-year period from its PVID fallowing program (San Diego will purchase the water).
- f. **Socio-Economic Impacts** - IID will set up a "local entity" after consulting with the County, State and local interests; the local entity will handle receipt and disbursement of the mitigation money which consists of \$10,000,000.00 contributed by SDCWA, 5% of contract proceeds contributed by IID starting in year 8, subject to a \$10,000,000.00 cap, and additional contributions by SDCWA, if necessary. SDCWA eventually gets its contributions back through price reductions at the back end of the contract.
- g. **SDCWA/MWD** - MWD will wheel the IID/SDCWA water through an exchange agreement for 30 years and for 15 years after that, subject to an agreement on the exchange rate for that second period.

6. **Protest Dismissal Agreement**

The IID/SDCWA Transfer Agreement is conditioned upon approval by the State Water Resources Control Board ("SWRCB"); the two agencies filed a Petition for Approval of a transfer to SDCWA of up to 200,000 afa and, as amended, acquisition by CVWD and/or MWD of an additional 100,000 afa, the amendment coming pursuant to the Protest Dismissal Agreement ("PDA").

CVWD and MWD filed protests based in large part on three points: first, federal rather than state law governs whether the transfer can take place; second, under federal law, IID's contract rights to Colorado River water are limited to the amount IID can put to reasonable and beneficial use in its own service area, so it cannot transfer any water; and third, in any event, IID is wasting water and has a legal obligation to take reasonable steps to stop the waste; not only does it not have a right to transfer water "conserved" by that effort, CVWD and MWD have a right to that water as priority holders next in line.

Since CVWD and MWD are satisfied with the water budgets each will receive under the QSA, these two agencies were willing to and did agree, through the PDA, that CVWD and MWD would withdraw their protests on condition that SWRCB approval, if given, would not serve as precedent for any other transfer by IID (or for a substitute transfer to San Diego if the present one does not go forward) with regard to SWRCB jurisdiction, with regard to application of state or federal law, with regard to reasonable and beneficial use, and with regard to potential injury to CVWD and MWD as junior priority holders.

If the SWRCB approval did not include the PDA elements, then IID and SDCWA agreed to withdraw the Petition and start over. Also, if the QSA terminates, so does the SWRCB approval of the transfer.

The SWRCB has issued an order approving the transfer, incorporating the terms of the PDA, but including some conditions and provisions that either IID or various environmental groups do not like. Petitions for Reconsideration are being filed, and the SWRCB has scheduled a hearing and will issue its Final Order on December 30.

7. Salton Sea Settlement Agreement

This Agreement would provide for an agreed-upon cash payment by CVWD to IID, reflecting a negotiated settlement of IID's claim for reimbursement for settlement of third-party claims, for damage to IID's own lands, for reimbursement for dike construction and maintenance, and for sharing of property ownership and/or flooding easements. The form of the agreement is being negotiated.

8. IID/CVWD Conjunctive Use Program

The elements of this program have yet to be worked out, but principally it will provide that if there is any groundwater storage capacity available after CVWD's needs are met and after making provision for any agreement for conjunctive use with MWD, CVWD will make storage space available to IID within the Coachella Valley aquifers.

9. Canal Lining Agreements

The lining of the Coachella and All-American Canals will involve the following agreements, summarized below.

a. Allocation Agreement

This agreement will be among BOR, CVWD, IID, MWD and the San Luis Rey Indian Water Rights Act Settlement Parties (SLR). The specific terms are still being negotiated. The agreement will address the following:

- (1) It will allocate among the projects the conserved water to be provided to SLR and MWD and address Decree accounting issues during the QSA.
- (2) It will define the circumstances under which IID can exercise call rights to the conserved water.
- (3) It will serve as a Boulder Canyon Project Act Section 5 Water Delivery Contract for SLR.
- (4) It will establish mechanisms for estimating and paying the additional operation, maintenance, repair and replacement costs incurred by IID and CVWD during and after the QSA.

b. Coachella Canal Lining Agreements:

(1) Coachella Canal Lining Funding Agreement

This agreement is between DWR and MWD provides state funding for the lining of the Coachella Canal.

(2) Assignment of Portion of Canal Lining Funding Agreement

This agreement, among CVWD, MWD and DWR allows CVWD to serve a project contractor for design and construction of the Coachella Canal Lining Project.

(3) Coachella Canal Lining Construction Agreement This agreement among CVWD, MWD, and BOR provides for the construction, operation, maintenance and repair of the Coachella Canal Lining Project. The construction costs will be paid by MWD. The works will become property of the U.S. CVWD will be responsible for operating and maintain the project under the same terms as its existing project contracts with BOR.

(4) Implementation Agreement for Environmental Mitigation Measures for Coachella Canal Lining

This agreement, among BOR, CVWD, MWD, USF&WS and DFG will

addresses responsibility for performing and funding the mitigation measures associated with the project.

c. **All-American Canal Lining Agreements:**

(1) **All-American Canal Lining Funding Agreement**

This agreement between DWR and IID provides for state funding of the replacement canal.

(2) **All-American Canal Lining Construction Agreement**

This agreement between BOR and IID and CVWD will contain similar provisions to the Coachella Canal Lining Construction Agreement regarding ownership, operation and maintenance of the project.

(3) **Implementation Agreement for Environmental Mitigation Measures for All-American Canal Lining**

This agreement, among BOR, USF&WS, DFG and IID will address responsibility for performing and funding the mitigation measures associated with the project.

10. **Overview of Environmental Compliance for QSA Water Budget and Transfers**

There are several statutes that require evaluation and mitigation of environmental effects of the proposed QSA transfers. The principal federal statutes are the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The principal state statutes are the California Environmental Quality Act (CEQA), the California Endangered Species Act (CESA), the Fully Protected Species Statutes (FPS). Additionally, Water Code Section 1736 requires that the State Water Resources Control Board not approve a transfer unless it finds that the transfer would not unreasonably affect fish, wildlife, or other instream beneficial uses.

a. **NEPA/CEQA Compliance**

NEPA requires that a federal agency approving a major federal action first prepare an environmental impact statement analyzing the significant environmental effect of the proposed action

and alternatives to the proposed action. CEQA requires that a local agency approving or funding a project first prepare and certify an environmental impact report analyzing the significant environmental impacts of the proposed project and to adopt measures to mitigate those impacts or a statement of overriding considerations.

To comply with NEPA and CEQA, six environmental impact reports/environmental impact statements have been prepared to analyze the environmental impacts of the QSA transfers and identify mitigation measures:

- (1) Final Environmental Statement on the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions (IA/IOP EIS) prepared by the Bureau of Reclamation and filed November 1, 2002.
- (2) Final Environmental Impact Report/Environmental Impact Statement on the Imperial Irrigation District Water Conservation and Transfer Project (Transfer EIR/EIS) prepared by IID and BOR and certified by IID on June 25, 2002 and filed by BOR on November 1, 2002.
- (3) Final Program Environmental Impact Report on the Implementation of the Colorado River Quantification Settlement Agreement (QSA PEIR) prepared and certified by CVWD, IID, MWD and SDCWA in June, 2002.
- (4) Final Program Environmental Impact Report on the Coachella Valley Water Management Plan and State Water Project Entitlement Transfer (Water Management Plan PEIR) prepared by CVWD and certified October 8, 2002.
- (5) Final Environmental Impact Report/Environmental Impact Statement on the Coachella Canal Lining Project (Coachella Canal Lining EIR/EIS) prepared by BOR and CVWD.
- (6) Final Environmental Impact Report/Environmental Impact Statement on the All-American Canal Lining Project (AAC Lining EIR/EIS) prepared by BOR and IID.

Addenda are being prepared for the QSA PEIR and the Transfer EIR to address

changes in the mitigation strategy for the impacts on piscivorous birds at the Salton Sea and additional mitigation requirements imposed by California Department of Fish and Game at the Colorado River. Collectively, these documents provide NEPA/CEQA compliance for all activities involved in the implementation of the QSA transfers.

b. ESA Compliance

Compliance with the ESA requires that the entity carrying out a project that will

result in an incidental taking of a federally listed endangered species obtain incidental take authorization from the U.S. Fish and Wildlife Service either under an incidental take statement in a biological opinion issued by the Service in a consultation with another federal agency under ESA Section 7 or under an incidental take permit issued by the Service as part of a habitat conservation plan under ESA Section 10.

ESA compliance is being achieved by means of two separate Section 7 consultations by BOR with the Service.

The first, completed in January 2001 with Region 2 of the Service (Phoenix) addressed the effects on endangered species along the Colorado River from the Interim Surplus Criteria and Secretarial Implementation Agreement. The Service issued a Biological Opinion authorizing incidental take of the following endangered species: Bonytail Chub, Razorback Sucker, Yuma Clapper Rail, Southwestern Willow Flycatcher. The BO also specifies measures to minimize and mitigate incidental take that BOR must implement as conditions of the take authorization. MWD and SDCWA are responsible for funding these mitigation measures.

Originally, IID proposed a Habitat Conservation Plan to support an incidental take permit with “no surprises” assurances covering both existing operations and maintenance activities of IID and the impact of QSA transfers on 96 listed and unlisted species at the Salton Sea, the Imperial Valley and All-American Canal right-of-way. The proposed HCP foundered for several reasons. The wildlife agencies ultimately determined that the first alternative for addressing impacts on piscivorous birds at the Salton Sea, HCP 1, was biologically infeasible. HCP 1 proposed to construct 6300 acres of fish ponds and fish hatcheries to feed 1/5 of the present population of piscivorous birds (California Brown Pelican, American White Pelican, Black Skimmer and Double-Crested Cormorant) for 75 years. The second Salton Sea Strategy, HCP 2 was rejected by IID because of community concerns about large-scale fallowing. HCP 2 would require IID to provide make-up water to the Salton Sea to offset the transfer inflow reductions until 2030, the year the BOR model, using the 95% confidence interval, projected that salinity levels in the absence of the transfers would eliminate the salt water fishery that the birds forage upon. The only feasible method to implement this strategy would have required fallowing of 75,000 acres of land in the Imperial Valley. Lack of information about many other species proposed for coverage and the large number of species proposed to be covered in the HCP made it impossible for the Service to process the

HCP in time to meet the December 31, 2002 deadline.

In lieu of the HCP, BOR initiated a second Section 7 consultation, this time with the California-Nevada Office of Region 1 of the Service. This consultation was initiated in July and will be completed in December. It involves consultation on species conservation measures that BOR, CVWD, IID, MWD and SDCWA propose to undertake to address the impacts on endangered species at the Salton Sea and in Imperial Valley from implementation of the QSA transfers. The Service will issue a Biological Opinion authorizing incidental take of the following endangered species at the Salton Sea and in the Imperial Valley: Brown Pelican, Yuma Clapper Rail, Southwestern Willow Flycatcher and Desert Pupfish. The mitigation measures will be identical to the proposed species conservation measures. The conservation measures for all the species except the Brown Pelican are drawn for the IID HCP. The Brown Pelican measures involve provision of roosting sites along the California coast.

c. CESA and FPS Compliance

Compliance with the CESA requires that an entity carrying out a project that will result in incidental take of a species listed as threatened or endangered under CESA obtain incidental take authorization by one of three means: (1) Preparation of a Natural Communities Conservation Plan; (2) An incidental take permit issued by California Department of Fish and Game under Fish and Game Code Section 2081(b); or (3) A consistency finding by the Director of the California Department of Fish and Game that the provisions of a biological opinion issued by the Service under ESA Section 7 or the provisions of an incidental take permit issued by the Service under ESA Section 10 satisfy the requirements of Fish and Game Code Section 2081(b) for issuance of an incidental take permit.

Until passage of SB 482 this year, the only means for complying with the FPS statutes was to avoid a taking of fully protected species because the statutes absolutely prohibited all takings of fully protected species. SB 482 added a new section 2081.7 to the Fish and Game Code which allows the Department of Fish and Game to provide incidental take authorization of fully protected species that may occur as part of the implementation of the QSA by any of the means for authorizing incidental take under CESA if all of the following requirements are satisfied:

- (1) The requirements for CESA incidental take authorization are satisfied (i.e., fully mitigated and funded)
- (2) The mitigation measures provide for development and implementation of an adaptive management program.
- (3) The QSA is executed on or before December 31, 2002
- (4) After consultation with the Department of Water Resources and an opportunity for public comment and review, the department determines, based on the best available science, that the implementation of the QSA during the first fifteen years that the agreement is in effect (1) will not result in a material increase in projected salinity levels of the Salton Sea, and (2) the agreement will not foreclose alternatives for reclamation of the Salton Sea as summarized in the Salton Sea Reclamation Act of 1998.

To comply with the requirements of SB 482, the QSA transfers have been restructured to provide during the first fifteen years of the QSA (1) the conserved water to be transferred to SDCWA will be generate by fallowing and IID will provide make-up water to the sea and (2) the ramp up schedule of conserved water to be acquired by CVWD will be reduced by 90 kaf. The Department of Fish and Game has given a preliminary assessment that the impacts on the Salton Sea of the first 15 years of the revised QSA will not result in a material increase in projected salinity levels or foreclose alternatives for reclamation of the sea.

Incidental take authorization under CESA and SB 482 will be obtained as follows:

- (1) MWD and SDCWA will apply for incidental take permits from the California Department of Fish and Game under Fish and Game Code Sections 2081(b) and 2081.7 for species at the Colorado River.

- (2) IID will obtain a consistency finding from the Director of California Department of Fish and Game based upon the Service's BO on the conservation measures authorizing incidental take of Southwestern Willow Flycatcher, Desert Pupfish, Brown Pelican and Yuma Clapper Rail in the Imperial Valley and Salton Sea.
- (3) IID will obtain an incidental take permit under Fish and Game Code Sections 2081(b) and 2081.7 for California Black Rail in the Imperial Valley.

d. Water Code Section 1736 Compliance

The State Water Resources Control Board issued Water Rights Order 2002-13 approving the transfers upon compliance with various mitigation measures identified in the Transfer EIR/EIS and the proposed IID HCP including HCP 2, and found that with implementation of those measures, the transfers would not unreasonably affected fish, wildlife and other instream beneficial uses. Significantly, SWRCB modified Salton Sea Strategy HCP 2 to require that IID maintain salinity levels only for the first fifteen years, and only at the model mean, not the 95% confidence level. The Order reserves jurisdiction to revisit the 15 year cutoff if a reclamation plan is adopted. The Order also gives the Chief of the Water Rights Division authority to permit substitution of equally protective mitigation measures in place the HCP and Transfer EIR/EIS elements identified in the Order.

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