

STATE WATER RESOURCES CONTROL BOARD

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

WEDNESDAY, JANUARY 23, 2002
9:00 A.M.

CAL/EPA BUILDING
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

REPORTED BY:

ESTHER F. SCHWARTZ
CSR 1564

CAPITOL REPORTERS (916) 923-5447

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APPEARANCES

STATE WATER RESOURCES CONTROL BOARD:

ARTHUR G. BAGGETT, JR., CHAIR
RICHARD KATZ

STAFF:

HARRY SCHUELLER
VICTORIA WHITNEY
TOM PELTIER
ANDREW FECKO

COUNSEL:

DANA DIFFERDING

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REPRESENTATIVES

FOR IMPERIAL IRRIGATION DISTRICT:

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REPRESENTATIVES (CONT.)

FOR DEFENDERS OF WILDLIFE:

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SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 23, 2002, 9:00 A.M.

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CHAIRMAN BAGGETT: Good morning and welcome to the prehearing conference on the joint petitions of the Imperial Irrigation District and San Diego County Water Authority for approval of long-term transfer of conserved water from IID to San Diego pursuant to an agreement between the two parties. The petition also seeks approval of a long-term transfer of conserved water from IID to Coachella Valley Water District and Metropolitan Water District of Southern California.

I am Art Baggett, Chairman of the State Water Resources Control Board and with me today is Richard Katz, fellow Board Member.

Also present today are Harry Schueller -- there he is -- Chief Deputy Director, and Vicky Whitney, Supervising Engineer; and hearing team members for this transfer, Dana Differding, staff counsel, Andy Fecko, environmental scientist, and Tom Peltier, senior engineering geologist.

This prehearing conference is being held in accordance with the public notice dated December 20th, 2001. If you intend to speak -- I think everybody knows the drill here -- fill out the blue cards. If you are not sure, put "If necessary." If you have written comments, if you can please

1 give them to our staff. I think we've got most of them
2 already, but if you have additional ones, that would be
3 helpful.

4 The purpose of this prehearing conference is to receive
5 comments from the parties and other participants on the
6 scope of the hearing, the status of any negotiations to
7 resolve protests to IID's and San Diego's petition, the
8 status of the joint EIR/EIS being prepared by IID and the
9 U.S. Bureau and any other appropriate procedural issues.
10 The goal of this prehearing is too ensure that the hearing
11 proceeds in an orderly and expeditious manner.

12 If you have any opinions regarding procedural matters
13 that will help us further that goal, such as appropriate
14 time limits on cross-examination, rebuttal testimony or
15 stipulations of fact that the parties may be willing to
16 enter into, we would be interested in hearing that today.

17 Because this is not a hearing, there will be no
18 cross-examination. Participants should not attempt to
19 discuss the merits of the issues, the petition, at this
20 time. As set forth in the December 20th notice, the Board
21 has scheduled a hearing on the petition beginning on April
22 23, 2002. All parties will have an opportunity to present
23 their evidence and cross-examine opposing witnesses during
24 those hearings.

25 The Board will not announce any decisions today

1 regarding the matters to be discussed during this prehearing
2 conference. Following this prehearing, the Board may, if
3 necessary, issue a revised hearing notice.

4 A couple of housekeeping matters which I would like to
5 bring up. One, attached to the hearing notice listed
6 proposed staff exhibits, but it failed to mention that staff
7 plans to offer the exhibits into evidence as exhibits by
8 reference in accordance with California Code of Regulations,
9 Section 648.3. That is pretty much standard, but I wanted
10 to make that clear.

11 Also, although it is not required by the hearing
12 notice, we would certainly appreciate and encourage parties
13 to submit electronic copies of their exhibits as well as
14 hard copies if possible. The hearing notice requires both
15 electronic and hard copies of the exhibit identification
16 index be submitted. The notice does not require exhibits to
17 be submitted in electronic form. But if you do electronic
18 copies of exhibits, we'd appreciate it if they are submitted
19 in Microsoft Excel '97 or Word '97. That helps facilitate
20 all of our sharing of information.

21 We ask that the participants limit the presentation to
22 a maximum of 20 minutes. Although I think for this few
23 cards we will be flexible. We know that people have come a
24 long way and worked many years on some of these petitions.
25 In the interest of time, as always, please avoid repeating

1 details already presented by other participants, and, if you
2 agree, if you could indicate that. That would help.
3 Alternatively, participants with the same interests are
4 encouraged to make joint presentations.

5 A Court Reporter is present and will prepare a
6 transcript. If you will be speaking and have a business
7 card, Esther always appreciates those for the record.
8 Please give it to the Court Reporter when you come up.

9 Also to accommodate the Court Reporter, if you could
10 please use the microphone when speaking. And if you would
11 like a copy of the transcript, make arrangements with the
12 Reporter.

13 We'd also like to -- we are in the process of a major
14 remodel here. Those of you who have been in these hearing
15 rooms before, we have eliminated the moat in front. So we
16 are half there. So we do apologize. We haven't totally
17 finished the remodel, but I am amazed we got this far this
18 fast. We are trying to make this a more hearing friendly
19 room, the way it was designed did not work for at least
20 water right hearings. I think when we are done we will have
21 it set up for Power Point and panels of witnesses so you all
22 will have your tables like you used to at the Bonderson
23 Building with the retrofit, like I said, that is in
24 progress.

25 With that, I do have a number of cards. We will start

1 out with the first one, is David Osias from IID.

2 If you have general questions or have any questions
3 about the hearing notice.

4 MR. OSIAS: Thank you. The remodel doesn't quite
5 accommodate a joint presentation. This is really on behalf
6 of the four settling parties, and I want to start my
7 comments this morning with a description of the recent
8 developments that have happened since the notice of
9 December 20th came out.

10 Those fall into two categories. First, the fact of the
11 Protest Dismissal Agreement, which has been under
12 discussion, as you know, for a long time, has actually been
13 finalized. And since December 20th has been approved by
14 each of the four agencies: Imperial, San Diego, Metropolitan
15 and Coachella Valley Water District.

16 If you will excuse me one minute, I want to bring mine
17 up, I left it in my bag.

18 I want to spend a few minutes with you going over that
19 very significant accomplishment, what else I would intend to
20 address this morning, just so you know what are the topics.
21 Also, I want to bring up the current status, as you inquired
22 about, the EIR/EIS, and there have been developments in that
23 since the December 20 notice. I then want to address
24 briefly what we think the case in chief will look like,
25 discuss with you some of the time parameters for that,

1 given sort of the magnitude of the water volume and impacts
2 of this proposed deal. And then lastly turn to a few of the
3 hearing conduct issues.

4 So let me start, if I might, with the Protest Dismissal
5 Agreement. We sent to you, Mr. Baggett as Hearing Officer,
6 and to staff counsel, Ms. Differding, both a letter and a
7 copy of that agreement. We copied it to all known
8 protestants, so I hope everyone has one.

9 CHAIRMAN BAGGETT: We have received that, Richard and
10 I.

11 MR. OSIAS: Of most significance within that agreement
12 are provisions that deal with three topics. First is that
13 sort of the tree trunk of the settlement, if I can use that
14 cliché or analogy, is that all four parties request that
15 this hearing and the decision be nonprecedential, other than
16 with respect to issues regarding standing. It's probably
17 obvious, but I will take one minute to explain why the
18 parties have planned this.

19 MEMBER KATZ: Is your agreement contingent on that?

20 MR. OSIAS: It is.

21 MEMBER KATZ: I have a problem.

22 MR. OSIAS: There is a fundamental disagreement that
23 has existed between Imperial and San Diego on the one hand
24 and Coachella and Metropolitan members on the other with
25 respect to what bodies of law control and how they control.

1 Included in that list are issues involving this Board's
2 jurisdiction on issues like transfer of Colorado River
3 water.

4 In order to craft a settlement that could fulfill the
5 goals of both parties or of all parties and to further the
6 efforts of the Quantification Settlement Agreement and the
7 California needs for reducing use of Colorado River water,
8 neither party or neither side, I guess would be a better way
9 to describe it, was willing to surrender and say that the
10 other side was right. And so the compromise, which truly
11 was an agreement that hearings would go forward before this
12 Board on this transfer to San Diego and on acquisitions by
13 Coachella and Metropolitan and the decision on this fairly
14 unique set of circumstances would be nonprecedential so the
15 question of jurisdiction and other things lives for another
16 day for other parties, presumably at some other time, to
17 fight about.

18 Now you asked if that is a condition, and the answer is
19 it is. Because without that condition, the parties would
20 have to brief, presumably this Board would have to rule and
21 it is hard to come out on a question of, for example,
22 jurisdiction with a tie. One side will -- the Board will
23 either rule it has jurisdiction or not. The settlement is
24 intending to obviate that need by having some consent so
25 long as it is nonprecedential and the participation and the

1 entirety of the Protest Dismissal Agreement provision
2 provides no precedent. This Board's conduct provides no
3 precedent for the next time, if ever, a Colorado River
4 transfer between these groups should come forward.

5 I suppose not necessarily following the lead of your
6 comment, it's pretty important for the parties to know
7 before the hearing and before they would have to prepare to
8 put on evidence whether that is going to happen or not.
9 Because, given that it's a condition, if its not going to
10 happen, then there won't be a settlement and there will be
11 further evidence and witnesses than if there were.

12 MEMBER KATZ: I appreciate that. I think likewise I
13 think you might appreciate the position it puts the Board in
14 to have parties come before us and say we've decided for you
15 what action you may or may not take. Because if you don't
16 decide what we want, we don't want to play. That to me
17 seems -- I understand from your position. It seems
18 presumptuous by parties coming before the Board whether or
19 -- first of all, we can't make that decision here today, for
20 starters.

21 Second of all, we can't commit the Board here today on
22 that, and it would be inappropriate for us to attempt to do
23 so. There is another route open to you for resolving this
24 whole issue that doesn't bring you before this Board. There
25 are other routes. But they don't get you some of the

1 benefits that you seek by coming before the Board for its
2 blessing of this action.

3 So, you've chosen to come before the Board for reasons
4 that make sense to your clients. Having made that decision,
5 though, I think, and speaking only for myself, and I think
6 Art would probably disagree with me because he's more
7 reasonable and rational than I am, that to come forward and
8 say before we start we think you ought to agree with what we
9 want on this particular matter. Again, it is presumptuous
10 just from -- that is just one person's opinion.

11 CHAIRMAN BAGGETT: Something I would certainly like to
12 -- I am sure we will hear from the other parties following
13 you on this precedential issue. I think we have one very, I
14 guess, technical challenge. There are two of us. And I
15 think clearly for us to preordain an order would take a
16 vote, I think legally. I think a Hearing Officer cannot
17 make a calling and bind a board which hasn't even voted on
18 an order of the Board. At least the way the Water Code is
19 currently written that authority clearly isn't there.

20 So that will be -- that is I guess one challenge.
21 Well, I will say that in the two years I have been, almost
22 two years, since I have been Chair we have specified in
23 every single order whether it is precedential, not
24 precedential, and it is not per se. We make those
25 determinations in the order and usually for very narrow

1 areas of those orders, not the entire order. We might just
2 say it is one portion. And frankly, if you've followed our
3 orders in the last two years, anyway, or last year, I guess
4 probably more clearly in the last year or so, you noticed
5 we've probably done some absolutely 180s on some of our
6 predecessors' orders, much to, depending on which side of
7 the order you are on, some people have appreciated that and
8 some parties have said, "Wait a minute, you can't do
9 that."

10 I think we strongly believe it is up to this Board to
11 make the determination. We will certainly look at past
12 orders, but that doesn't bind us in any way, shape or matter
13 or future Board, in my opinion. This isn't a court of law.
14 This is an Appellate Court decision.

15 So just as, I guess, the way we, at least I view the
16 precedential nature. It is something we aren't going to
17 resolve today. I would certainly encourage all the parties
18 to give us your thoughts and why.

19 MEMBER KATZ: If I could add to that, don't interpret
20 my remarks as I'm opposed to this being nonprecedential.
21 I'm opposed to it that being a precondition of moving
22 forward and people assuming that they have the ability to
23 dictate to us that it will be nonprecedential.

24 MR. OSIAS: I meant, at the risk of being a poor note
25 taker, I have written down three things: not today, maybe

1 not by two Board members -- I don't think you said maybe,
2 that is my note -- and presumptuous and all that envisions?

3 MEMBER KATZ: Maybe not forever.

4 MR. OSIAS: Let me just address each of them briefly
5 and not necessarily in the form of argument. But not today
6 is fine. We are here. We have -- this is the first time we
7 have everyone together. So we thought it was important to
8 raise today.

9 CHAIRMAN BAGGETT: And I would certainly like all the
10 parties to raise it.

11 MR. OSIAS: That is the first reason. It was raised,
12 because this is the first really formal time when we have a
13 larger audience than the parties who have been negotiating.

14 MEMBER KATZ: You just happen to see new faces in the
15 room.

16 MR. OSIAS: Indeed.

17 And a process for deciding whether it should be no
18 precedent or not is probably an appropriate subject to
19 discuss today. We would request that you ask others, as you
20 just did, to submit in writing, if you wish, their position
21 on it. And we would like to submit ours. We would like to
22 address it. The timing of the decision is relevant, of
23 course, to how the decision comes out, which is going to
24 relate to the third point of presumption which I will get
25 to.

1 So, we would like to conclude today with a process at
2 least for that question to be addressed, and we would like
3 to suggest that it be addressed before the parties have to
4 commit to who their witnesses will be, which is at the
5 moment February 25th. So that gives us at least some time
6 to look at the parties' positions to meet and perhaps have
7 another, whether it is, prehearing or whatever.

8 CHAIRMAN BAGGETT: We can do it on a Board meeting
9 agenda. There are other ways.

10 MR. OSIAS: Second, the not by two members. I think
11 partly that is a legal question that we will submit
12 something on. In our cover letter we at least cited to sort
13 of the default that is in the Government Code, that is not
14 precedential unless you say it is. That would typically be,
15 I don't mean typically for the Water Board, but in general
16 it would typically be a Hearing Officer decision. Whether
17 that requires --

18 CHAIRMAN BAGGETT: Make it clear. At least the Board,
19 we will say it is precedential if it intends to be. That's
20 been my policy since --

21 MR. OSIAS: I think the most troublesome one is the
22 question of dictating or presumptuous, and I suspect that
23 may come up even with respect to other terms not just no
24 precedent. And I did hear similar comments at the workshop,
25 and so I want to address those a little bit.

1 Notwithstanding perhaps how inartfully I couched my
2 answer, but I tried to be as blunt and frank as I could. Is
3 it a condition? The answer is yes. Perhaps there is a more
4 politic way of saying that.

5 The circumstance we find the parties in on this
6 question and other important questions is with disputes that
7 either can be resolved or can be avoided. We believe this
8 Board has, and I don't believe the Board disagrees, has the
9 authority to rule in the way that the settlement asks it
10 to. I don't think we have made as a condition any
11 provisions that are outside the parameters of normal conduct
12 by the Board. I am not saying the Board has to in every
13 circumstance rule on all the things that either the
14 petition itself or the Protest Dismissal Agreement would ask
15 it to. But it certainly can, and it has in other
16 circumstances.

17 Second, it's necessary for settling parties to inform
18 the Board on what basis they'd settle. And it is clearly a
19 policy of the Board, and in this case has been encouraged in
20 repeated notices, that the parties try to settle.

21 Third, it is not telling the Board what it has to do to
22 inform the Board of the conditions of the settlement. It
23 is, I hope, informing the Board that if it chooses to do A,
24 the settlement will come to fruition. And if it chooses to
25 do B, there won't be a settlement, but there will still be a

1 proceeding here and other decisions will be made. There is
2 really no other way to inform the Board other than to do it
3 in that style. It is not meant to say because we've settled
4 you must, therefore, do whatever the conditions are.

5 But it is I think appropriate and necessary for each of
6 the parties who are looking out for their own interests to
7 inform the Board that if you did A we would go along. But
8 if you don't, then we would just as soon take our chances in
9 a protested proceeding.

10 MEMBER KATZ: In a similar vein, and I appreciate the
11 Board's precedence with how you stated this, and I don't
12 take offense at it. I do appreciate it.

13 In a similar vein, a condition that might be acceptable
14 to myself or other Board Members when coupled with other
15 conditions might not be acceptable as a condition by
16 itself. So part of my comments should be interpreted to
17 mean that before I at least commit to anything, I want to
18 see the whole package. And it doesn't make sense to me to
19 give up pieces of it, if you will, before you've seen the
20 whole -- had the whole discussion. So if that --

21 MR. OSIAS: That is a very illuminating comment, and
22 the whole package here is probably easier to state than to
23 actually get one's arms around.

24 MEMBER KATZ: Probably.

25 MR. OSIAS: But we have with respect to the settlement

1 a settlement agreement which is fairly all encompassing with
2 respect to what the parties hope would come out of the end
3 of the hearing process, both in terms of conclusions,
4 findings of fact on both legal and factual matters.

5 We have as an exhibit to it and in connection with the
6 process that you are familiar with a Quantification
7 Settlement Agreement which deals with far more than just
8 settling before this Board and which is a package of
9 agreements that probably is the whole deal, to be
10 nontechnical, that you are going to want to know.

11 We have partly a circularity issue, and perhaps, and I
12 haven't consulted --

13 MEMBER KATZ: That is why we give you the short table
14 only.

15 MR. OSIAS: Indeed.

16 It is -- to say that A provision in isolation is not
17 something that I can either bless or not bless or even want
18 to try until I see how it fits in with everything else, it
19 is ringing a bell that sounds right. On the other hand, not
20 knowing -- I keep pointing at precedent -- whether that is
21 going to come out at the end of the pipeline, makes parties
22 have to put on a case in chief just in case it doesn't. It
23 is that circle that we want to avoid.

24 MEMBER KATZ: I appreciate it. And frankly, we
25 wouldn't mind skipping a hearing if we could. There is --

1 we already have some incredible number of days set aside for
2 this evidence in addition to the other things.

3 CHAIRMAN BAGGETT: A mere ten.

4 MEMBER KATZ: A mere ten.

5 MR. OSIAS: I have only five on my --

6 CHAIRMAN BAGGETT: We have more set aside. Some of us
7 are optimistic.

8 MR. OSIAS: Given my 20-minute estimate this morning.

9 MEMBER KATZ: I've got significant interest, as I know
10 Art does, and the third Member I am sure does, or will.

11 CHAIRMAN BAGGETT: Or a fourth member.

12 MEMBER KATZ: Or fourth member or designee for the day
13 in the quantification of this agreement. And what the
14 quantification agreement looks like obviously has a great
15 impact on decisions that I make in terms of looking, as we
16 said, at the whole picture.

17 MR. OSIAS: And I think now if I were to start over --

18 CHAIRMAN BAGGETT: Twenty more minutes.

19 MR. OSIAS: Correct. I would recouch my response to
20 your question about whether it is a condition a little
21 different. And that is, it is a condition, but it's a
22 condition only in connection with the whole package. And so
23 maybe going specifically to your concern, the parties
24 themselves would not request a no precedent decision in the
25 absence of the entire Quantification Settlement Agreement,

1 and all of its provisions.

2 So we have, in fact, probably as much of a specific
3 desire to avoid a piecemeal approach to this as you do.
4 Because, in fact, as you know we have tied everything
5 together also.

6 MEMBER KATZ: Correct.

7 MR. OSIAS: And so at least if it wasn't understood
8 before, our request for the no precedent and your response
9 if you're inclined to give one at some point that we can
10 talk about in the process in both directions is hoped to be
11 conditioned upon the remainder of the Quantification
12 settlement approach. So an example might be, again being
13 short-winded I hope, this will be a no precedent decision if
14 the Quantification Settlement Agreement takes effect, its
15 provisions are implemented, the schedules met, and at the
16 end we find a bunch of other stuff.

17 MEMBER KATZ: And we like what we see.

18 MR. OSIAS: I am saying once you have gone through it.
19 For example, if you didn't like the Quantification
20 Settlement, we wouldn't ask you to make the no precedent
21 either. We wouldn't be asking for it. So it is truly in
22 that context that we're requesting it, and I hope that what
23 we should be focusing on, therefore, is how to get sort of a
24 tentative answer that is tied to the rest of the settlement
25 in its full package so we don't have to put on cases that

1 may be just a useless exercise.

2 MEMBER KATZ: Given the revision of your response to my
3 question, my revised response to your revised statement
4 would be that is interesting.

5 MR. OSIAS: That is progress. I will take it.

6 MEMBER KATZ: I was hoping you would take it.

7 We are out of here.

8 CHAIRMAN BAGGETT: Let's keep going. We aren't going
9 to resolve it in the next 20 minutes. No substantive issues
10 here today.

11 MR. OSIAS: With less time but with the same context,
12 the parties request for how the movement of water, using a
13 very nontechnical term, we create water, we move water to
14 parties.

15 CHAIRMAN BAGGETT: Require transfer.

16 MR. OSIAS: It is the tools of a lawyer to come up with
17 the --

18 MEMBER KATZ: I may just ask how you create water
19 pieces?

20 MR. OSIAS: You conserve it. You create new waters.

21 MEMBER KATZ: I thought you'd come up with something
22 that was --

23 MR. OSIAS: Even Imperial has conservation goals to it,
24 notwithstanding its name.

25 The description of creating the water is, of course,

1 noncontroversial. It is going to be conserve water. The
2 description of how it moves is an important term to the
3 parties, in part because of their disagreements over that
4 applicability of law.

5 So we have been careful in our settlement agreements to
6 not describe the movement of water to Coachella and
7 Metropolitan as a transfer but to merely say that conserved
8 water is made available for acquisition. It is in the same
9 package as the no precedent, that that is a significant
10 clause.

11 Similarly, we have carefully crafted our goal of
12 getting certain findings of facts and conclusions of law in
13 that same vein. And I guess as a question, since this is
14 our first collective meeting, not only with the Hearing
15 Officer and Board Member Katz and other protestants and
16 notwithstanding your admonition that cross-examination at
17 all isn't here today, we would be pleased to answer
18 questions about the protest settlement agreement. It was a
19 lawyer document, which you can obviously tell. And to the
20 extent that it is not clear either to you or staff or to
21 protestants about what we are trying to effectuate or what
22 something means, I would be pleased, along with the other
23 settling parties, to answer those questions.

24 And I would like to point out at least for note taking
25 purposes that the sort of key language on no precedent is

1 found in recitals J, L and Paragraph 3(a), that sort of the
2 key descriptive language on transfer versus acquisition is
3 found in Paragraphs B, E and Nos. 2 and 3, and then the
4 revised and restated request for findings. When I say
5 revised and restated, the petition had a list itself.

6 CHAIRMAN BAGGETT: In the amended petition you have
7 kind of tried to get there.

8 MR. OSIAS: Right. But this Protest Dismissal
9 Agreement is the substitute list, and those are found in
10 Paragraph 3. Those are probably the primary things to focus
11 on to the extent people have concerns.

12 Now let me move on, if I can, to letting you know that
13 the Protest Dismissal Agreement has, obviously, its
14 conditions and in the larger scheme of things if it becomes
15 effectuated will resolve the protest of Metropolitan Water
16 District and Coachella, two of the primary protestants in
17 terms of what we would assume would be witnesses and
18 evidence.

19 It also has resolved, we have been informed, Central
20 Basin and West Basin Water Districts and the City of Los
21 Angeles. We believe -- and I think Coastal Municipal has
22 merged into the Municipal Water District of Orange County.
23 So their protest in and of itself is gone. Progress. I
24 just for the first time this morning saw a letter from --

25 CHAIRMAN BAGGETT: So did I, from Mr. Kidman.

1 MR. OSIAS: Right. And it has apparently not resolved
2 their concerns, but I would add an important word "yet." I
3 think that has to do primarily with us not sitting down with
4 them and walking them through how it works. So I am
5 optimistic that that will be resolved.

6 Turning to the subject of other protests and how that
7 relates to the progress report I want to give on the
8 EIR/EIS. The CEQA document was released to the state
9 clearing house on January 17th. They noticed and said
10 anticipate a date of January 11th.

11 CHAIRMAN BAGGETT: We have. I haven't read the entire.

12 MR. OSIAS: I only brought the Table of Content. That
13 would be all I could get through this morning. It was up on
14 the website and delivery to the locations on the 18th.

15 The NEPA release date is actually this Friday on the
16 25th because of publication requirements. We had been
17 informed for a long period of time that higher-ups within
18 the federal agencies were going to persuade those beneath
19 them to allow a 60-day comment period. It turns out that
20 persuasion was ineffective, and have a 90-day comment
21 period. So the last date for comments, using the later NEPA
22 release date, will be April 26th.

23 There were previously announced hearing dates on the
24 environmental document. Those will be rescheduled now in
25 light of the release date. I think one of them was in a

1 week, and it's too soon.

2 In light of this schedule, we want to suggest that the
3 March 25th filing date for testimony and evidence and
4 exhibits as it relates to environmental only may be
5 postponed to April 10th to give people a couple more weeks
6 to digest the EIR/EIS, and that we bifurcate the hearing to
7 take the topic of unreasonable impacts on fish, wildlife and
8 instream, the finding that is necessary, that we designate
9 specific days to take that up and put them, at least on the
10 five days that 33 were noticed, we suggest we reserve the
11 last two for that. That would still be 20 days after that
12 April 10th filing date. So parties would have a chance to
13 look at what was filed. That is more of a conceptual
14 approach than anything specific, but we thought setting that
15 towards the end of the hearing process and having it be
16 environmental day or days might be a useful tool.

17 In light of the developments since the notice, both the
18 Protest Dismissal Agreement and the status of the EIR/EIS,
19 and some of the things we will discuss this morning, I think
20 including by other parties a supplemental notice we think is
21 going to be necessary. We would like to again certainly
22 backfold into that what the process will be for dealing with
23 sort of the settlement package and informing parties and
24 figuring out a process for dealing with the conditions to
25 the settlement in a time frame that will work.

1 Again, February 25th is currently the date that every
2 party's supposed to identify all the witnesses, and that
3 will vary depending upon we are in settlement mode or not.

4 I am not sure whether you would encourage me to leave
5 the table now and come back later when we get into what we
6 think cases in chief would look like and how long do we
7 think we will be here, because I have discussed some fairly
8 new things that --

9 CHAIRMAN BAGGETT: Again, we would certainly like to
10 hear from the other parties on the bifurcation issues, April
11 25th, the date issues.

12 MR. OSIAS: If I might, let me reserve for a moment
13 when we finally get into how long do we think the hearing
14 will take and how many witnesses. I have that to report.
15 But maybe we can deal with some of these preliminary
16 questions first.

17 CHAIRMAN BAGGETT: I think while you are up here we
18 might as well deal with all of the things, then they can all
19 follow. Let's finish. Although it is going to be awful
20 hard to plan a case in chief, I can see the dilemma.
21 Precedential, how we want to bifurcate this hearing if we
22 do, with phases which isn't unheard of. Some ways I
23 personally like that approach. I think it makes it --
24 breaks it into some more reasonable pieces to deal with.

25 MR. OSIAS: Let me sort of highlight what I think the

1 petitioner's case in chief topics will be to cover, and then
2 I will give you our estimate of how many witnesses that
3 might entail and what your time estimate would be, assuming
4 the Board would consent.

5 We intend to cover an overview of the Imperial
6 Irrigation District water rights, delivery system, its
7 economy and farm-based economy, and segue right into a
8 current description of a water balance, how much water do we
9 get and where does it all go. We would address, as we have
10 in other proceedings before the State Board, specifically in
11 16820, we would address our current status of reasonable
12 beneficial use, talk about, just again, probably briefly,
13 the historical nature of how we got here, that is in the
14 staff's exhibits already, historical conservation activity.
15 We have the '88 agreement with Met. We have other things
16 that have been self-funded, current efficiency and a
17 comparison of that efficiency to other Colorado River users
18 and other ag districts in the state of California.

19 We then move to the opportunity for further
20 conservation activity in Imperial, and what we propose to do
21 to create the 300,000 acre-feet, sources, systems and on
22 farm. We then move into, if we do this, why we believe
23 there would be no injury to any legal users of water,
24 obviously if necessary, factual basis and inquiries of this
25 Board. We then address the benefits of the Quantification

1 Settlement Agreement itself of which this transfer is a
2 substantial component. That, obviously, benefits to the
3 parties, but benefits to the state as well.

4 We discussed an overview of San Diego as the
5 transferee, their current use, reasonable use of water, the
6 fact that the transfer produces no growth inducement. And
7 then, assuming we bifurcate, even if not, I think
8 sequentially makes sense, we move into why we believe there
9 are no unreasonable impacts. We are not saying there are no
10 impacts, but why we think there is no unreasonable impacts
11 on fish and wildlife or instream uses.

12 That would have to look at, really, four areas: IID
13 with respect to creation of conserved water, San Diego with
14 respect to receipt of water, Colorado River because of the
15 change in flow between Parker and Imperial Dam, and then
16 lastly the Salton Sea.

17 We would, IID would anticipate having probably four
18 witnesses, one primarily for the environmental impact area,
19 one expert witness on reasonable beneficial use, efficiency,
20 conservation opportunity, and one or two to deal with how
21 the District currently operates and the history.

22 San Diego would have one or two witnesses to deal with
23 its subject areas.

24 I think given the -- I don't know if this a bad time,
25 but given the volume of material and the volume of water, it

1 is going to take more than 20 minutes for each witness to
2 summarize the fairly extensive evidence that we are going to
3 present, and we are anticipating, to take four to six hours
4 case in chief. Now, obviously, we will tailor that to the
5 Board's wishes.

6 That I think concludes my prepared remarks and either
7 now or later would be willing to answer any questions about
8 any of the details of the settlement, this one or the QSA in
9 general, and how that process really relates.

10 CHAIRMAN BAGGETT: I guess just an aside. I think we
11 are all aware there is legislation being proposed to deal
12 with some of the issues of the transfer.

13 Do you have any update or status on that, some of the
14 ESA issues?

15 MR. OSIAS: There is both at a state level and a
16 federal level a variety of alternative bills under
17 consideration. I don't know where they currently stand
18 among them. Conferred with Dr. Eckhart earlier from IID who
19 are here. This much I know, the effort is underway and none
20 of them are dead. But I don't know that any of them have
21 moved very far this early in January.

22 This is really a timing question, too.

23 CHAIRMAN BAGGETT: That is what I would throw out to
24 the other parties to address. The Board -- I guess, one, we
25 can't take I guess official notice of an act of a

1 legislature without reopening the records, the hearing.

2 MR. OSIAS: You can also condition later.

3 CHAIRMAN BAGGETT: We can condition a decision --

4 MR. OSIAS: And if it doesn't happen, then we can come
5 back.

6 MEMBER KATZ: Couldn't you also interpret the action of
7 the Legislature if the Legislature hadn't tended it to apply
8 to this action, they would pass urgency statute, and the
9 fact that they don't pass an urgency statute means that they
10 don't intend to apply? Other than the fact that you can't
11 get 54 votes and you can't get --

12 MR. OSIAS: I was going to say this: There is always
13 at least two theories of legislative action interpretation.
14 One is it's truly political. They couldn't get two-thirds
15 vote to create Mother's Day. Therefore, you can't determine
16 anything from the failure to do that. Or they intended to
17 send a message, by not doing it.

18 MEMBER KATZ: If I had a bill, I certainly wouldn't
19 take that interpretation on Mother's Day.

20 MR. OSIAS: I don't know. There are -- I am not -- I
21 shouldn't be informing you. You know more than me. The
22 agenda for the Legislature at any given moment is catches
23 their attention.

24 CHAIRMAN BAGGETT: The reason I raised the question is
25 we can take either official notice or just if any parties

1 have any comments on that or objection to that or conditions
2 upon a enactment of legislation.

3 MR. OSIAS: I do think, for example, take the obvious
4 one that somebody is going to talk about even if I don't, I
5 might as well, the Salton Sea. There is a Salton Sea
6 restoration movement that has both state and federal support
7 of some kind. Whether that support turns into money and on
8 what schedule is currently unknown. How that will affect
9 the implementation of mitigation is a fair question that
10 will take monitoring of the federal and state efforts,
11 including funding efforts. And I think we will just have to
12 submit in real time or where we are when we get to having
13 the hearings.

14 It is, maybe going just a different step, interpreting
15 what the State Legislature has said at least in the past
16 about the Salton Sea, it has tried to immunize Imperial from
17 impacts by creating conserved water in Water Code Section
18 1013. So this is a parallel path process which makes it
19 messier than anyone would like, but it is where we are. And
20 I think this Board will be able to decide what it needs to
21 do either because it will have the answers, the Legislature
22 will have acted either by denying or not, or it can
23 condition its decision upon the Legislature doing certain
24 things and set some outside dates. And if they don't
25 happen, we'll come back. So I don't think the uncertainty

1 about legislation prevents us from going forward.

2 CHAIRMAN BAGGETT: One last question. At this point, I
3 got your amended petition with change, and there was a
4 pretty creatively worded sentence on place of use, I
5 thought. But you have asked to change a place of use in
6 your permit, in terms of your permit. That seems to me that
7 intent is a transfer. And I've read the settlement
8 agreement. I understand why there are acquisitions.

9 I was trying to figure out, because, in fact, you
10 haven't done an amendment for a change of place of use under
11 the laws of the state. So I just want to make clear that is
12 the intent.

13 MR. OSIAS: The intent is to cause findings with
14 respect to the full creation of the 300-. And its impact of
15 ending up where it is bargained to go, you notice I am
16 avoiding all the technical terms, to have the relevant
17 findings regarding injury, impacts, preserved rights, et
18 cetera. Have those findings made, but not have this Board
19 state, therefore, that IID is transferring water under state
20 law to Metropolitan or Coachella. They have rights to
21 Colorado River Water in their own right. So we are studying
22 the impacts of the water movement. We are, under the QSA,
23 preserving the water as IID priority, even though used by
24 Metropolitan, say, or Coachella. That is one of the QSA
25 terms.

1 We are not formally transferring it to them. We are
2 asking you to make the findings that you would make in
3 connection with the transfer, but not define that it is a
4 transfer. I think the findings have to do with factual
5 inquiries and protecting IID's water rights.

6 CHAIRMAN BAGGETT: I understand. I am sure we will
7 hear from at least two or three other parties on this one.

8 MR. OSIAS: All that it is important to us, we have not
9 -- assuming no precedent, I don't say that lightly, but I
10 don't see how it could have a harm to any other party with
11 respect to those characterizations. The harm would be at
12 either end of getting the water or not.

13 CHAIRMAN BAGGETT: That is a challenge, hopefully, we
14 are going to try to illuminate here in the next hour.

15 MR. OSIAS: Thank you.

16 If anybody has questions later, I will be glad to field
17 them from wherever.

18 CHAIRMAN BAGGETT: Scott Slater, San Diego County.

19 MR. SLATER: Good morning, Chairman Baggett, Board
20 Member Katz. Scott Slater on behalf of the San Diego County
21 Water Authority.

22 I want to join in David's comments. I think he did a
23 great job of summarizing at least the procedural status of
24 where we are. I do want to shine a spotlight on a specific
25 issue and the exchange that was occurred around the

1 importance of the settlement.

2 I think it is useful to consider that the parties are
3 before the Board, not with merely a petition request for
4 change. They are there now before the Board with the
5 existing petition plus a settlement agreement. And while we
6 acknowledge that we are looking for a procedural assurance
7 from the Board, that is or might be characterized a bit as
8 an exotic, that there is nothing against public policy,
9 nothing that would infringe on any party's individual rights
10 with regard to the question of precedence. There is no
11 right of any party in a proceeding to demand that a decision
12 of the Board be precedent. That is something that lies
13 within your discretion.

14 If one can conclude that it is a matter that lies
15 within your discretion, then one would hope that the Board
16 would look to the many benefits associated with preserving
17 and promoting the settlement and not have it go awry on
18 merely a procedural ground.

19 Board Member Katz suggested that he wanted to see the
20 whole package. Surely that whole package must come forward
21 and the Board and the general public must understand what
22 that package is comprised of. Having said that, that
23 package, as it is presently articulated, will die if there
24 is not an accommodation on a procedural point. And this
25 case it doesn't mean that the transfer or the QSA would not

1 ultimately be completed if we don't get an early
2 determination.

3 But consider the nature and risk associated with an
4 adversarial proceeding among adversarial parties for a
5 great long time. I find it instructive and illuminating.
6 To the right we have Met, San Diego and Coachella along with
7 Imperial on the same side of the room on anything. That in
8 and of itself is an achievement. And not wanting to pick
9 scabs or open freshly closed wounds, we would strongly urge
10 that the Board consider the great advantages to allowing the
11 parties in this unusual context, an unusual context being a
12 very comprehensive settlement, a settlement that has been
13 years into the process, coming together with the Board
14 having the opportunity to reject, deny and do as it chooses
15 with the substantive merits of what is going on here. We
16 urge that you take into account the admittedly exotic
17 request on process.

18 MEMBER KATZ: Scott, I appreciate that. I appreciate
19 what you said. I also do want to tell you that in my
20 experience, both in this building and the other one down the
21 street, the fact that four interest groups have decided that
22 they can reach accommodation doesn't necessarily mean that
23 the public interest is being served. It just means four
24 interest groups have worked out a deal that is good for
25 their particular constituencies.

1 Our job here is to see if that meets the public
2 interest. While I appreciate the nature of the request as
3 exotic and the nature of coalition as unusual at a minimum,
4 that does augment making good public policy.

5 MR. SLATER: We would say, defer to you. We think we
6 have a heck of a case to put on in front of you. We know
7 that you reserve the rights to do that. But on a question
8 of process as opposed to the merits, again, the parties here
9 are not saying to you that they want a decision which is not
10 binding. We fully accept the Board's role and ability to
11 issue a binding decision which is binding on the public and
12 binding on the parties.

13 What we are looking for is a ruling that it is not
14 precedential and consequently cannot be cited in another
15 proceeding somewhere else by other parties.

16 So I think with that, I will close my remarks and be
17 happy to answer any other questions you have.

18 CHAIRMAN BAGGETT: I guess one issue should go --
19 developing questions as we go along. It seems one we should
20 amend the hearing notice to at least address the issues
21 you've put forward in the settlement agreement, to be
22 consistent with that.

23 MR. SLATER: I think we as a group would suggest, yes,
24 that is the case. And again, not wanting to tell you how
25 to do it, but to suggest a way that seemed to us to be a

1 good idea. It would be possible and seems to me to be an
2 easy way to do it, to append the Protest Dismissal Agreement
3 as an attachment or an exhibit to the revised hearing notice
4 so that everyone sees with some precision what it is we are
5 looking for. In that way there is no mistake in
6 paraphrasing or what portions constitute the complete
7 package.

8 CHAIRMAN BAGGETT: Do you have a problem, I guess IID,
9 with certifying the EIR while we are waiting? EIS, it
10 sounds like now we've got these timelines. We were trying
11 to keep them together. Now the timelines are going to cause
12 them not to be together.

13 MR. OSIAS: I apologize for not addressing that. There
14 is under discussion now a question of whether to bifurcate
15 the EIR from the EIS so we can have a certification under
16 CEQA in June, notwithstanding we may have to get a ROD under
17 EIS.

18 CHAIRMAN BAGGETT: I think that would be useful given
19 especially state issues and state law.

20 MR. OSIAS: We are going to be meeting on that this
21 week.

22 CHAIRMAN BAGGETT: Good.

23 MR. OSIAS: It sounds like it would be useful to us,
24 too.

25 CHAIRMAN BAGGETT: I think it would be useful.

1 Sorry. More people come.

2 Anything else?

3 MR. SLATER: Thank you.

4 MEMBER KATZ: Thanks, Scott.

5 CHAIRMAN BAGGETT: Robert Maddow, Coachella.

6 MR. MADDOW: Good morning, Mr. Chairman, Board Member
7 Katz. I am Robert Maddow. I represent Coachella Valley
8 Water District. I serve as Special Counsel for Coachella in
9 regards to the water rights aspect of this very complex
10 sweeping transaction. I am accompanied here today by Steve
11 Abbott whose is from the law firm which serves as General
12 Counsel to Coachella. In particular to the extent that the
13 Board Members want to explore details of the large number of
14 activities that are going on other than the water rights
15 proceeding itself, for example the legislation, Steve Abbott
16 has, in my view, an encyclopedic knowledge of what is going
17 on there, what the various schedules are and that sort of
18 thing. We would be happy to take any questions in that
19 regard as well.

20 With regard to the water rights proceeding I will make
21 my comments as briefly as I can. First, I, too, will join
22 in the comments that David Osias made in his
23 characterization of the Protest Dismissal Agreement and the
24 manner in which the four parties have now come before the
25 Board as a result of that important settlement which has

1 been reached.

2 I also join in the characterization of the issue that
3 Scott Slater just gave when he talked about it in terms of
4 being what he calls an exotic. But also the important
5 distinction that he made between the procedural issue that
6 we're talking about there and what you will be getting to in
7 the substance of this proceeding, assuming you would take
8 the approach the parties are recommending.

9 I want to just focus for a moment on where the parties,
10 or at least I see, Coachella going should our request not be
11 acceptable to the Board in regard to the no precedent
12 finding. I think you would be looking at a hearing that
13 would be very hard to conclude in less than that month. I
14 think you are talking about a proceeding that could be a
15 very difficult one. I think Scott's analogy to reopening
16 old wounds is probably a pretty good one.

17 It is important to recognize that on the one hand, as
18 Board Member Katz says, these are, as he put it, four
19 interest groups that have come together in a settlement.
20 But this is -- I think this goes deeper than that. The
21 fight over what happens within the third priority, the
22 Colorado River water, is lifeblood of two important entities
23 that have reached an understanding here that is an important
24 one.

25 And to the extent that we cannot go forward under the

1 understandings that have been reached here, this is not -- I
2 know this is going to sound like I'm trying to level some
3 kind of threat or something. That is the farthest thing
4 from my mind. I want you to understand what it is that we
5 have thought about in preparing for this hearing should we
6 not have been successful in reaching this kind of
7 accommodation. You're talking about a real
8 knock-down-drag-out fight over an awful lot of water
9 utilization application processes. In an awful lot of
10 places you are going to see a substantial body of
11 information that could come in that is going to -- it is
12 going to be a very difficult hearing, very lengthy hearing.

13 We think that that is not necessary to the extent that
14 the kind of settlement that we have accomplished can, in
15 fact, be implemented. Frankly, I recognize that this is
16 perhaps overly aggressive on my part, but my own suggestion
17 is that if there were a way in which the Board could give us
18 an indication with regard to the issue that we have raised
19 about no precedential finding prior to the time that we need
20 to file our notices of intent to appear, it would be of
21 enormous assistance to the parties in terms of the work they
22 may need to do and it would be enormous assistance to the
23 Board in terms of anticipation of what we will be facing.

24 If there is no QSA in place, and that is really what we
25 are going to be talking about since it is intertwined now

1 with this Protest Dismissal Agreement, we really start all
2 over, and we are going to go back to a blank slate. And I
3 think that would be unfortunate.

4 This is a proceeding in which I have been engaged to
5 deal with a fairly narrow slice of an enormously complex set
6 of issues. If you review the QSA, I haven't gone back and
7 actually counted, but we've talked readily about the
8 Quantification Settlement Agreement and the Protest
9 Dismissal Agreement, but if you look at that QSA and what it
10 entails, there must be in excess of 40 agreements all
11 together that the parties and the Secretary of the Interior
12 and State of California and others are working on, and they
13 all kind of rise and fall together.

14 When Board Member Katz talked about wanting to see the
15 whole picture, we understand the significance of that. I
16 kind of in sitting back and listening to the discussion,
17 listening to the colloquy between the Board Members and
18 David Osias this morning, I was envisioning this huge
19 structure of this complicated relationship of regulatory
20 proceedings and agreements, et cetera. All of which in
21 today's purposes are kind of tipping on the fulcrum of
22 whether or not the settlement that the parties have
23 attempted to work out, have worked out here, is going to
24 provide a basis for going forward. Otherwise I can see us
25 going back to a blank slate and a number of proceedings.

1 I will stop there. We would be happy to take any
2 questions.

3 CHAIRMAN BAGGETT: I guess so far it's been suggested
4 that we make a few changes to the notice so it be consistent
5 with the findings. I assume that is it.

6 MR. MADDOW: Yes. We've looked at that a little bit,
7 and, frankly, I don't mean to be presumptuous here, but
8 there have been some events which have happened since
9 December 20 when your notice was issued. I join in --

10 CHAIRMAN BAGGETT: That is why we are having the
11 prehearing.

12 MR. MADDOW: I join in David Osias' suggestions. We
13 noted in the notice that you specifically held open the
14 possibility of issuing a revised notice. We frankly think a
15 supplemental notice would make a lot of sense, given the
16 nature of the changes that have taken place. Based on my
17 past experience, and again not trying to be presumptuous
18 here, but trying to keep everything as clear as we can make
19 it for everybody, I would suggest to the extent that the
20 December 20th notice was a combined notice for today's
21 prehearing conference and for the hearing, that you issue a
22 supplemental notice that replaces the hearing notice aspect
23 of that notice in its entirety so we'd only have to look at
24 one document.

25 I also would join in Mr. Slater's suggestions that you

1 allow all of the parties through the vehicle of the notice
2 to have access to the Protest Dismissal Agreement. The
3 Protest Dismissal Agreement has attached to it the
4 Qualification Settlement Agreement as well as several of the
5 other critical agreements with the QSA, in particular, which
6 is sort of a capstone of the whole structure. That would
7 then be available to all the parties, and it would
8 facilitate preparation for this very important hearing if we
9 had some indication of how the Board may proceed with regard
10 to the request we've made on no precedent.

11 CHAIRMAN BAGGETT: In terms of bifurcating the hearing,
12 having basically some of the ESA, some of those issues at
13 the end, is that a problem?

14 MR. MADDOW: We do not have a problem with that. We
15 recognize the schedule change with regard to the
16 environmental documents and in particular with regard to the
17 90-day comment period on both documents. From the
18 standpoint of the end of those processes, we expect that the
19 CEQA process will be completed before the NEPA process. We
20 think that works well into the time schedule we have been
21 trying to describe.

22 CHAIRMAN BAGGETT: We certainly encourage that. We
23 have dates, at least on our calendar, set aside at the end
24 of May. We might want to relook at those, also.

25 MEMBER KATZ: You said you could update us on the

1 legislation. Because clearly without being any more
2 aggressive than counsel was, you did underscore the need for
3 the QSA to be resolved as quickly as possible as he
4 mentioned.

5 MR. ABBOTT: Steven B. Abbott, Redwine and Sherrill,
6 for Coachella Valley Water District.

7 One of the conditions precedent for the QSA to go into
8 effect is the receipt of various environmental permits from
9 the wildlife agencies by IID. One of the issues that has
10 arisen during the course of working with the wildlife
11 agencies to obtain those permits are issues involving the
12 fully protected species statutes of the State of California,
13 for which there is currently no authority by which you can
14 get a permit for the taking of those species.

15 There has been a process ongoing at the resources
16 agency to try to bring the various stakeholders together to
17 come up with legislation that would be satisfactory to
18 address that issue. The focus has been on a statewide fix.
19 That has not yet panned out. I am not sure people have
20 given up on that process yet. There will also be a focus on
21 obtaining more narrow Colorado River fix.

22 There is currently the Kelley Bill. It passed out of
23 the Assembly, pending before the Senate Natural Resources
24 Committee. There may be other vehicles that are used for
25 that. But we are seeking urgency legislation. We haven't

1 given up on that part yet.

2 MEMBER KATZ: I thought that there was more than we
3 have discussed before.

4 Thanks.

5 CHAIRMAN BAGGETT: I guess, in terms of the -- if we
6 amend the hearing notice to include the findings in the
7 agreement, I guess, are there any different findings? Those
8 are the findings? So there is nothing else, this would be
9 it, a chance -- we are going to start modifying.

10 Is there any other modifications?

11 MR. SLATER: We think that is an exhaustive list.

12 MR. MADDOW: We worked very hard to make that document
13 to stand alone and to encompass all of the pieces of what we
14 believe is needed to get us where we hope we can get.

15 CHAIRMAN BAGGETT: Hear from that in a minute.

16 I want to make clear since we have everybody in the
17 room here, I just want to make sure everybody is on the
18 record on same page here.

19 MR. MADDOW: I will attempt to speak for all four of
20 the parties. We worked extremely hard to get to the point
21 where that became an all encompassing list.

22 CHAIRMAN BAGGETT: Yes, sir.

23 Thank you.

24 MR. MADDOW: Thank you very much.

25 MEMBER KATZ: With the attorneys all getting along so

1 well, we have a one law firm.

2 MR. OSIAS: Pardon me, David Osias again.

3 I forgot to mention --

4 CHAIRMAN BAGGETT: I've got a couple of questions for
5 you.

6 MR. OSIAS: I did want to mention the current form of
7 the QSA will be on the IID website. We will be talking
8 about it and I did mention where it can be found. I think
9 the one that was cited in the notice was a December 2000
10 draft. We have a June 2001 draft which is much more
11 current. We will put that up and make that available to
12 anyone.

13 CHAIRMAN BAGGETT: Get us a copy electronically. We
14 will put it --

15 MR. OSIAS: On the IID website. And protestants, if
16 they want a physical copy, we will make that available to
17 them.

18 CHAIRMAN BAGGETT: Do we have dates on the EIR/EIS,
19 final dates?

20 MR. OSIAS: For certification. Not without
21 bifurcation. If bifurcate, we think --

22 CHAIRMAN BAGGETT: End of June?

23 UNIDENTIFIED AUDIENCE MEMBER: June, 1st of June.

24 MR. OSIAS: 1st of June for certification of the EIR.

25 And then unfortunately, it would be fall, September, for the

1 ROD, for the EIS.

2 The second point, I apologize, I forgot to mention, the
3 Imperial Irrigation District Board of Directors in response
4 to substantial requests by people who reside in Imperial
5 Valley would like to ask this Board to hold at least some of
6 the hearing in Imperial Valley. We understand that is
7 totally your prerogative, but there is -- this is obviously
8 a very significant event.

9 MEMBER KATZ: We will note the request.

10 CHAIRMAN BAGGETT: How about Ontario, is that close
11 enough?

12 MR. OSIAS: Somebody suggested you would say that.

13 CHAIRMAN BAGGETT: I just like neutral territory here.
14 We don't open in the old --

15 MEMBER KATZ: Scott wants to host the whole thing in
16 Santa Barbara.

17 MR. SLATER: He will offer Santa Barbara.

18 MEMBER KATZ: Thank you, Counsel.

19 MR. OSIAS: I understand the difficulties in doing
20 that. This is, as you can imagine, a significant event for
21 a very small community, and participation by them is
22 desired in terms of --

23 CHAIRMAN BAGGETT: For a portion of it?

24 MR. OSIAS: If so, I make that formal request, then.

25 CHAIRMAN BAGGETT: Well, we need to go back and discuss

1 the bifurcation issues.

2 MR. OSIAS: If you were serious about that question, I
3 would be glad to answer.

4 CHAIRMAN BAGGETT: Teleconference.
5 Anne Schneider.

6 MS. SCHNEIDER: Mr. Chairman, Mr. Katz, my name is Anne
7 Schneider representing the Metropolitan Water District of
8 Southern California.

9 I think if something has been underemphasized by Mr.
10 Osias it is the phenomenally difficult effort that has gone
11 into coming to the settlement agreement that we've submitted
12 to you. We have literally worked for more than two years.
13 And these settlement agreements are lawyer written, as
14 someone mentioned, and they are hard to read. But I think
15 the density is important because it reflects the extreme
16 difficulties that the parties had in reaching agreement in
17 the first place.

18 You had experience with very difficult settlement
19 agreements coming to you. This is not less in magnitude in
20 terms of difficulty, the scope of issues and the differences
21 of the parties that have been able to be set aside for
22 purposes of agreement than the agreement given to you
23 related to VAMP, agreements being worked now with respect to
24 Phase 8. I think that sometimes because the Colorado River
25 is so much further away and out of sight, out of mind

1 compared with the Delta, that the magnitude and importance
2 of this, this could be underestimated.

3 And you know, with those examples in mind, the Board
4 has in my practice been extremely interested in parties
5 coming together and reaching settlements, has invited that
6 and encouraged that for decades. And where it can actually
7 happen, there will always be elements that are difficult and
8 are expressed in a way that maybe is not as eloquent as it
9 should be for purposes of the Board's taking it on and
10 trying to help the parties use the settlement and moving
11 forward.

12 And I think that is the basis of what we are jointly
13 asking the Board to do, is to take the settlement and work
14 with it as much as possible because it is the tie that binds
15 at the moment these very extremely difficult issues of
16 federal versus state jurisdiction lie underneath the effort
17 to try to have this not be a precedent decision. That same
18 concern lies beneath the effort to characterize the
19 conservation of water for transfer differently than the
20 conservation of water for acquisition by Metropolitan and
21 Coachella.

22 You can see that with intense readings of the Protest
23 Dismissal Agreement, having multiple readings, it becomes
24 clear why we would pick something like a request to make
25 this not precedent and request to characterize this

1 acquisition rather than transfer. When you read the whole
2 document and see that the underlying absolutely historically
3 most decisive issue before us as parties is the question of
4 jurisdiction in the first place.

5 Metropolitan has historically and continues to take the
6 position that a matter of acquisition, such as we have here,
7 is best handled the way as mentioned in the '88
8 conservation and acquisition and effectively was handled
9 before. And the 1988, what we call, IID-1 conservation
10 effort has been successful. And that water could have been
11 and it will in the future be acquired by Metropolitan under
12 the law of the river.

13 Rather than debate these issues in which we could not
14 reach agreement, we have set the question aside. And to the
15 extent that that can stay set aside, the Protest Dismissal
16 Agreement can hold. I think what happens in the future with
17 conservation and use of IID priority three water is going
18 to, Metropolitan's view, be a matter of federal law, and in
19 Imperial's view maybe something else. We will never reach
20 agreement so far as I can tell.

21 So where the protest dismissal comes in is the parties
22 are standing down for the most basic of issues that have
23 divided them for a century. I guess what I am trying to say
24 is this is an extremely important agreement. It is probably
25 the most important agreement and probably the most

1 elaborately expressed agreement in terms of settlement by
2 parties presented to the Board as any of that has ever been
3 presented to you. And it is important to look at it as
4 such, I believe.

5 As to Mr. Osias' suggestions about allowing procedural
6 changes to occur to accommodate scheduling of EIR documents,
7 Metropolitan agrees that postponing the filing of testimony
8 exhibits until April 10th, for example, makes great deal of
9 sense. Bifurcating the hearing, if necessary, I think as
10 Mr. Baggett has mentioned, is something you've done before
11 makes sense, actually makes the hearing more manageable.

12 CHAIRMAN BAGGETT: Yes.

13 MS. SCHNEIDER: You end up probably needing a revised
14 or supplement hearing notice. And I think Mr. Osias pointed
15 out that the protest dismissal language, that we also urge
16 that you look to maybe you can use that to help word the
17 revised notice to avoid the issues of possible. And I agree
18 with Mr. Slater that it makes sense to attach the Protest
19 Dismissal Agreement or make it available on the website or
20 something. It's extremely complicated and --

21 CHAIRMAN BAGGETT: I think we attach it. I think
22 basically everything Met's in agreement?

23 MS. SCHNEIDER: That is right.

24 CHAIRMAN BAGGETT: The way we act to bifurcate it --

25 MS. SCHNEIDER: In closing the Met wants to stay in

1 agreement? We don't want to put on a case in chief any more
2 than Coachella does. And that is why the device of deciding
3 the procedural question of whether this is precedent or not
4 is of such great importance from a time standpoint.

5 CHAIRMAN BAGGETT: I appreciate that.

6 Any other questions?

7 Thank you.

8 MS. SCHNEIDER: Thanks.

9 CHAIRMAN BAGGETT: We have four cards, if necessary.
10 Any of them necessary?

11 MR. DU BOIS: I am William du Bois. I'm playing
12 somewhat of a dual role here because I represent the
13 California Farm Bureau as a water consultant, but also I'm
14 an Imperial Valley property owner, farm property owner. So
15 I have an individual axe to grind too.

16 MEMBER KATZ: Which axe are you grinding first?

17 MR. DU BOIS: I wish to make one request to you,
18 emphasize the request that has already been made by Mr.
19 Osias, representing the Imperial Irrigation District Board
20 who asked that the hearing be moved to El Centro or into
21 Imperial. I have in my possession faxed copies of letters
22 that have been written to you by the Imperial County Farm
23 Bureau requesting also the movement of the hearings, and a
24 letter from Larry Gilbert who is a protestant and also who
25 is the chairman of the several committees on water in

1 Imperial. And also I was informed last night that the City
2 of El Centro mayor is sending you a letter to the effect of
3 the same request of moving the hearings. It is terribly
4 important, I think, to the landowners down there. They feel
5 that their whole estates are at risk in this matter. And
6 they are intensely interested, but it is impossible for them
7 to appear in Sacramento. They might collectively hire an
8 attorney to represent their interests, but it is not the
9 same thing as being able to be there in person from time to
10 time during the hearings and enjoy firsthand the site of the
11 personalities and also the gist of the arguments.

12 CHAIRMAN BAGGETT: Enjoy, that is a word I never quite
13 understood.

14 MR. DU BOIS: Well, that is the request that I make of
15 you.

16 Thank you very much.

17 CHAIRMAN BAGGETT: Thank you.

18 I guess there will be an obvious opportunity for policy
19 statements for non -- for people that aren't going to be
20 cases in chief. Is that the greater interest, that they
21 want the opportunity to address the Board with policy-type
22 statements, a number of groups?

23 MR. DU BOIS: Yes. I understand that. It is true that
24 it might increase the number of policy statements that you
25 would get from individuals if you held the hearings in

1 Imperial, but that would be a very small part, I think, of
2 your burden. I realize that you have to travel and several
3 people here have to travel in order to hold those hearings
4 for everybody. I think that will be far outweighed by the
5 importance to the individual landowners here that will be
6 able to participate.

7 Thank you very much.

8 CHAIRMAN BAGGETT: Thank you.

9 MEMBER KATZ: Thank you.

10 CHAIRMAN BAGGETT: Tony Rossman.

11 MR. ROSSMAN: Good morning, Chair Baggett and Member
12 Katz. I am Tony Rossman, and I serve as Special Counsel for
13 the County of Imperial.

14 And first let me make what I hope is a procedural
15 suggestion growing out of our experience with the hydro
16 proceedings before the PUC. And that is electronics service
17 became the rule rather than exception. And I don't know how
18 many folks are going to wind up on the service list. Right
19 now it looks pretty large. But if we can rely on electronic
20 service, primarily with written service on those who
21 expressly request it, especially for the smaller
22 participants, that makes life a lot easier. And you might
23 want to have your staff confer with the woman -- I am
24 embarrassed that I can't recall her name right now, the ALJ
25 who presided over that. And I think it worked well in that

1 proceeding, and it might work well here.

2 Now as a procedural point, I have not yet and the
3 County of Imperial as of close of business Friday night had
4 not received a copy of the EIR/EIS. I just state that. My
5 remarks cannot be as informed as they would be.

6 CHAIRMAN BAGGETT: It was electronically available.

7 MR. ROSSMAN: Well, there is some of us who still try
8 to believe in weekends. And I did not know that fact. I
9 know that the County Counsel's office made an attempt Friday
10 night and FedEx to me, and that was not successful. And
11 although there may have been service of the Protest
12 Dismissal Agreement, our office did not receive that as of
13 at least yesterday when I came up to Sacramento, and it was
14 apparently not in yesterday's mail. I look forward to
15 seeing that.

16 I have great respect for my four colleagues who
17 preceded me and greater respect for the work they have put
18 into dealing with the great challenge as a state that we
19 face in this proceeding. So, in saying that I have not seen
20 and the County of Imperial has not seen either the EIR or
21 the Protest Dismissal Agreement, I don't want to imply that
22 we are going to be opposed or critical of either of those
23 documents. But that just informs what we cannot say here.

24 It seems to me the County has two issues. It has the
25 physical issue of how this transfer is going to affect the

1 County's environment and economy. But now I can see there
2 is a procedural issue of how this proposed Protest Dismissal
3 Agreement will affect the County's rights in this proceeding
4 and the rights of others.

5 So, therefore, I have to step back from knowledge and
6 go to experience and respectfully suggest that you consider,
7 you as the two Members of the Board here present, in your
8 revised order which seems to be coming --

9 CHAIRMAN BAGGETT: Revised notice.

10 MR. ROSSMAN: -- revised notice, that there be a formal
11 opportunity to respond to the Protest Dismissal Agreement.
12 At the early moments of this morning's meeting I was
13 prepared to ask for two weeks to do that. After Ms.
14 Schneider said that it took multiple elegant readings to
15 understand, and I don't doubt that, I began to think that
16 three weeks might be more like it. But I think that at
17 least if we are only to look at this on the order of a
18 pretrial motion, since this is so fundamental to the
19 proceeding, I think the other parties and, of course, we are
20 a protestant, ought to be given formal notice, which
21 apparently they have been, of this agreement but a formal
22 opportunity to respond to it.

23 CHAIRMAN BAGGETT: I think the proposal is that we
24 actually take the findings and put them in the hearing
25 notice so everyone will have multiple days to deal with all

1 issues raised.

2 MR. ROSSMAN: Right. But they are also asking, and
3 understandably so, for a predecisional ruling on what I
4 understand is the jurisdictional issue.

5 CHAIRMAN BAGGETT: The issue is precedential nature.
6 And I think for the Board, and we are not going to be able
7 to resolve today, we would have to set that up if we so
8 decide in a separate proceeding, a Board meeting, a
9 workshop, maybe -- again bifurcate that procedural issue out
10 separately. For the rest of the settlement agreement I
11 think it, at least the intent right now, is to put all those
12 findings into the revised --

13 MR. ROSSMAN: I can appreciate --

14 CHAIRMAN BAGGETT: We are really spotting on one narrow
15 issue. To some extent a procedural issue, whether it is
16 precedential or not. And I think I have already given you
17 my philosophy of precedential natures, anyway.

18 MR. ROSSMAN: Well, we have to see it before we can
19 know how to address it. I think we are all saying the same
20 thing, perhaps using different language.

21 CHAIRMAN BAGGETT: I think so.

22 MR. ROSSMAN: However, before leaving that issue, I
23 guess I just have to say, again based on experience, that
24 while the parties don't want your Honors to underestimate
25 the work they've done, I hope you won't underestimate the

1 significance of the motion, if that is what we were to call
2 it or proposal that is being made. It goes to this Board's
3 jurisdiction. It is not just a procedural issue like
4 cross-examination or consenting to certain findings. And
5 while the County of Imperial certainly hopes to come out of
6 this proceeding with a result that it finds not only
7 acceptable, but, in fact, phrase worthy, at the end of the
8 day there is just one person who is dissatisfied and takes
9 that issue to court, the question of jurisdiction never goes
10 away.

11 CHAIRMAN BAGGETT: I guess I feel that maybe we are not
12 quite clear here. You're assuming that the jurisdiction of
13 whether this is even a transfer or not versus the
14 precedential nature of our decision? I don't --

15 MR. ROSSMAN: I have to --

16 CHAIRMAN BAGGETT: You are losing me here.

17 MR. ROSSMAN: Well, I haven't seen the documents, so I
18 have to see what is being proposed.

19 MR. SLATER: If I may --

20 MEMBER KATZ: Let Tony finish.

21 MR. ROSSMAN: I'm just suggesting that we have to see
22 what the documents say. There may be ways to deal with the
23 jurisdictional issue that would not expose the Board to
24 having this question remain alive afterwards, and that is
25 just a reservation that arises in my mind based on

1 experience in this -- this is a very tough issue. An
2 equally tough issue is the question which we are going to
3 have to address when we see the substance of what is
4 proposed.

5 As your notice points out, the law of the river has
6 been a long time in the making. And I am aware of how much
7 ink has been spilled on both sides of this fundamental
8 question of federal versus state jurisdiction. But one is
9 left a little bit uncomfortable with the notion that somehow
10 we are going to not look to legal precedent at the moment of
11 greatest need, when the issue is truly joined. So, we just
12 have to look and see at what they are proposing.

13 One would hope that this can be worked within the law
14 of the river rather than trying to say that this is somehow
15 going to be exempt from it. Because a lot of folks in
16 Congress, a lot of lawyers, a lot of Supreme Court justices
17 have spent years dealing with these issues. And we just
18 have to be cautious before we say, well, we are going to
19 call time out in dealing with this fundamental issue.

20 That gets back to the EIR. And, again, once we've seen
21 the EIR/EIS, and hopefully the lead agency has responded to
22 our request that the respective roles of this Board and the
23 Bureau of Reclamation be set forth so we can know what those
24 prerogatives are, we will be in a better position to respond
25 to their suggestion of a nonprecedential proceeding.

1 On the EIR/EIS, we would hope that any hearings on
2 those documents would be at least 30 days after we have had
3 a chance to look at them, so that they will be of value to
4 the lead agencies in getting valuable comments. I'm glad to
5 hear that there were hearings actually contemplated next
6 week, that that has been put off.

7 Since there is a suggestion that it looks like a
8 two-week extension in respect of the statement of witnesses
9 and the like, it just seems that just a two-week delay in
10 everything, including the notice of intent to appear and
11 how we are going to appear would be in order. One would
12 hope that we would have all those questions answered in our
13 minds by that time.

14 I am going to go out on a limb, which as you both know,
15 can be bank dangerous when representing Board of
16 Supervisors, but I feel very sure that the Imperial Board of
17 Supervisors would join in that request for at least some of
18 your hearings in Imperial County. It will add a lot of
19 legitimacy to your decision.

20 Thank you very much.

21 CHAIRMAN BAGGETT: Thank you.

22 MEMBER KATZ: Thank you.

23 CHAIRMAN BAGGETT: Two more if necessary, Brendan
24 Fletcher.

25 MR. FLETCHER: Good morning. I am Brendan Fletcher for

1 the Defenders of Wildlife.

2 I will start out with a few procedural points. The
3 first, to follow up on Mr. Rossman's request for electronic
4 service, that would have great benefit for groups like mine
5 and others interested in the environmental community who
6 would find it difficult, I think, given the length of the
7 service list to serve all of the parties on that with their
8 policy statements or whatever they may come forward with.

9 On the precedent issue, again, I would second
10 Mr. Rossman, and I think we are all on the same page here.
11 There is a great public interest that has been acknowledged
12 several times this morning in whether and what parts of the
13 Board's decision may be precedential, and we'd all
14 appreciate and request an opportunity to be a part of that
15 decision making through a workshop or other formal process.

16 On the EIS availability, and this is just a point of
17 information, I requested one last week from the Bureau of
18 Reclamation, and apparently some of the colleagues may be
19 able to speak with this. There was a printing problem and I
20 was told that as for receiving print copies as opposed to
21 the electronic version that is available it could be a week
22 or two, which lends more if that is accurate.

23 CHAIRMAN BAGGETT: We have two, an EIR and an EIS. The
24 EIS, I understood, wasn't coming out next week. The EIR
25 came out last Friday.

1 MR. OSIAS: It is currently a joint document, but it
2 has to be released. It is a joint document that has to be
3 released by the two lead agencies. Under CEQA the lead
4 agency was Imperial. Has been released. Know of no
5 printing problems. It also has to be released by the Bureau
6 of Reclamation as the lead agency. That will not be till
7 this Friday. Even though it is the same document, it is
8 publicly available.

9 MR. FLETCHER: That is my understanding as well. The
10 printing problem may be just a federal problem, but the
11 print document may be some time getting into folks' hands.

12 CHAIRMAN BAGGETT: You want electronic service. You
13 are going to have electronic documents. That is how we got
14 it.

15 MR. FLETCHER: I am sorry, that is how I have been
16 looking at it as well. As you know, it creates difficulty
17 for everyone. Electronic service would hopefully ease.

18 Finally, I will just turn to what we -- our interest in
19 the hearing and what we would like to see addressed that
20 hasn't been discussed much this morning, but I will just go
21 through it quickly.

22 Scope of the issues to be addressed. Our interest is
23 in the Salton Sea, primarily fish and wildlife impacts in
24 all areas affected by the transfer, but primarily today we
25 focus on the Salton Sea. Your initial notice, of course,

1 covered the issue of reasonable or reasonable impacts to
2 fish and wildlife. We see those as falling into two
3 categories. We would hope that you take those into account
4 throughout the hearing.

5 The first would be direct impacts, and we would see
6 those as impacts that would result from any reduction in
7 flows to the sea.

8 The second would be impacts on restoration plans to the
9 sea. And as has been mentioned earlier, there is a
10 restoration movement for the sea that has support at both
11 federal and state levels. A broad segment of the
12 environmental community is interested in that. And in
13 addition to its physical impacts on the sea, the transfer
14 may have impacts on the feasibility and the cost of
15 restoration plan. We would like to see that addressed as
16 well in the hearing.

17 Another issue that has been alluded is the manner of
18 implementing the transfer. And I was at the Salton Sea
19 symposium a couple weeks ago where land management options
20 for implementing the transfer were discussed, using the
21 euphemism the F word. We would like to see all alternatives
22 for implementing the transfer discussed and heard fully
23 within the hearing process.

24 Finally, we would like to see environmental impacts
25 generally discussed during the transfer. That falls outside

1 the category of -- that may fall outside the category of
2 fish and wildlife impacts. That could be air quality
3 impacts and impacts that you would see in San Diego from
4 possible growth inducing effects of the transfer.

5 The issue of bifurcating the proceeding has been
6 raised, the several dates set aside for environmental
7 issues, I think that could be helpful in facilitating
8 participation from groups within the environmental community
9 if they could focus their efforts on one day. I think you
10 would get better input that way.

11 Thanks a lot.

12 CHAIRMAN BAGGETT: Thank you.

13 One final card, Eric Shepard.

14 MR. SHEPARD: The tribes don't have any comments at
15 this time.

16 CHAIRMAN BAGGETT: Anyone else?

17 MR. ROSSMAN: Mr. Chairman, can I just respond to two
18 things that came to mind?

19 CHAIRMAN BAGGETT: Sure.

20 MR. ROSSMAN: First of all, the ALJ in the PUC hearing
21 was Barbara Hale. My apologies Ms. Hale that I couldn't
22 remember, but I think she will be an important resource to
23 you.

24 And that gets to my second point, electronic
25 service. I would like to go on record as saying something

1 good about PG&E. I realize that is very unfashionable. But
2 in that proceeding they have fastidiously made personal
3 service of large documents, like EIRs and EIR supplements,
4 but then we all used electronic service for, say, 20-page or
5 shorter documents which form the bulk of our file. It is
6 very difficult in a small office to deal with downloading an
7 EIR/EIS.

8 And so, I think, Mr. Chairman since you made the point
9 that we are advocates of electronic service, I think there
10 are limits to that technology, too.

11 One precise question, I think it was answered from the
12 dialogue this morning, but, you know, at some point there is
13 question of who is going to be state lead. I now see
14 unambiguously that IID is the lead agency. I take it that
15 what is going to happen, and I can be corrected if wrong, is
16 that when the EIR process is done and at the present time we
17 take no position on bifurcation, I think it will depend on
18 how much interplay between the federal and state issues turn
19 out to be, that after that certification then as lead agency
20 they will approve a project which presumably will be the
21 request to transfer the water or make it available, whatever
22 terminology they are going to use. And subsequent to that
23 point, then this Board has as a responsible state agency
24 would be in a position to make a decision. If I am
25 incorrect about that assumption, I hope someone would

1 correct me or else verify that this morning.

2 MR. SLATER: Scott Slater. I have just one comment
3 related to clarification. Again, we are not asking the
4 Board for a predecision on jurisdiction. Indeed. Indeed
5 the petitioners have availed themselves of this body and
6 asked for approvals, a binding, fully legal approval
7 consistent with all laws. What we have asked for is a mere
8 procedural decision on precedent.

9 CHAIRMAN BAGGETT: That is my understanding.

10 MR. OSIAS: As to a couple of environmental questions.
11 Although they are not locked down yet, the proposed new
12 hearing dates on the EIR/EIS are April 2, 3 and 4. I think
13 that is within the time frame that somebody was even
14 suggesting, be more than 30 days out. If those don't work,
15 it will be in that neighborhood.

16 CHAIRMAN BAGGETT: That will be in El Centro?

17 MR. OSIAS: I think they will have at least one in El
18 Centro, at least one in San Diego and probably one in
19 Ontario.

20 And as to Mr. Rossman's last question, as this Board
21 said, it was leaving the hearing record open until the
22 certification. He is correct, IID as the lead agency will
23 ultimately certify and that will have the project
24 description and that will come back to you.

25 CHAIRMAN BAGGETT: Any other questions?

1 MR. ROSSMAN: Hate to sound like a lawyer. Will IID
2 then make a decision, will your Board actually make a notice
3 of determination and decision under CEQA before it comes
4 back to this Board?

5 MR. OSIAS: That is a compound question, if you want to
6 be a lawyer. But, yes, we will make a decision and that
7 decision will come back to this Board.

8 MR. ROSSMAN: Thank you.

9 CHAIRMAN BAGGETT: Any other questions?

10 MS. DIFFERDING: I do. Can everyone hear me so I don't
11 have to go up to the mike?

12 Dana Differding, staff counsel. I do have a question
13 about this whole transfer versus acquisition debate.

14 I understand that you have been very careful with your
15 language in the Protest Dismissal Agreement, that the four
16 parties have. But you also submitted a change petition
17 form. And the way I read that is asking for specific
18 amendments to IID's permit. And I want to get clarification
19 from IID and San Diego whether they are still asking for
20 that.

21 MR. OSIAS: Yes. But we don't believe it is
22 inconsistent with the way we have described the transaction
23 in the settlement.

24 CHAIRMAN BAGGETT: That was my impression.

25 MS. DIFFERDING: Thank you.

1 CHAIRMAN BAGGETT: The Board will come out with a
2 supplemental notice and will take into account all we have
3 heard today and try to get it out in a timely fashion. I
4 don't want to commit to a time now. I think we can do it in
5 fairly short order, at which point we will deal with all
6 issues raised today, tell you how we are going to deal with
7 them.

8 With that, thank you for making the trip and I think it
9 was productive.

10 (Hearing concluded at 11:30 a.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. SCHWARTZ, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 4 through 69 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 4th day of February 2002.

ESTHER F. SCHWARTZ
CSR NO. 1564

