UNDATED

IMPERIAL IRRIGATION DISTRICT

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Background on California's Quantification Settlement Agreement (QSA)

In April 1998, the Imperial Irrigation District (IID) and the San Diego County Water Authority (San Diego) announced the largest agricultural-to-urban water transfer agreement in the history of the West. Under the agreement, San Diego would pay IID a per acre-foot (AF) charge that would be used primarily to fund on-farm conservation improvements. Over time, these improvements could yield 200,000 AF annually of conserved Colorado River water for use by the San Diego region for the next 75 years.

The landmark agreement ignited long-smoldering tensions among California water agencies that draw their supplies from the Colorado River. Coachella Valley Water District (CVWD) threatened to contest the transfer on the grounds that as the next priority user it was entitled to any Colorado River water not used by IID. The Metropolitan Water District of Southern California (MWD), which wholesales water to San Diego, also opposed the transfer agreement. And although supportive of agriculture-to-urban water transfers, the Interior Department raised concerns about how conservation by IID could be verified.

At the same time, the other six Colorado River Basin states increased pressure on California to live within its basic apportionment of 4.4 MAF annually. California has used an average of 5.2 MAF annually. The water in excess of California's basic 4.4 MAF apportionment, roughly 700,000 AF, has been used by MWD, which serves California's largest urban areas, including Los Angeles and San Diego.

Initially, California was able to exceed its apportionment because Nevada and Arizona had not fully developed their apportionments, and under the Law of the River (see attached outline), California could claim – temporarily – their unused shares. However, since 1997 both Nevada and Arizona have made full use of their apportionments. The excess water to meet Southern California's urban needs now comes mainly from Colorado River flows that the Secretary of the Interior has declared to be surplus. The Secretary can make a surplus declaration when there is enough water in Colorado River reservoirs to meet needs in excess of the 7.5 MAF apportioned to the Lower Basin. Surplus determinations are made annually according to a set of guidelines established by federal regulation.

The turmoil caused by announcement of the IID-San Diego transfer agreement in early 1998, together with pressure from the Basin states and the Interior Department, eventually brought the California water agencies to the table to develop, along with the state, the Quantification Settlement Agreement (QSA). The QSA has become the core of the *California Colorado River Water Use Plan*, the blueprint for bringing the state within the 4.4 MAF apportionment.

The QSA was negotiated with the very active involvement of then Secretary of the Interior Bruce Babbitt, although the Department is not a signatory. The parties to the QSA are the IID, CVWD, MWD and the State of California. In October, 1999, the parties agreed to the "Key Terms" of the QSA, and the draft agreement was released for public review in December, 2000.

Execution of the final QSA requires that a number of objectives be met. These include the drafting of numerous legal documents and sub-agreements and the completion of all state and federal environmental documentation and permitting. The Key Terms provide that the QSA must be finalized and implemented by Dec. 31, 2002, or it will be terminated.

In essence, the QSA quantifies and caps the somewhat elastic Colorado River entitlements of the agricultural agencies, IID and CVWD, and reallocates, during the term of this agreement, California's share of Colorado River water through the voluntary conservation, exchange and transfer of more than 500,000 AF annually. Most of that water will move from agricultural to urban use.

Specifically, the QSA caps IID's annual entitlement at 3.1 MAF; and CVWD's at 330,000 AF, but provides another 126,000 to CVWD through transfers and exchanges with IID and others. The Agreement includes the IID-San Diego conservation transfer of up to 200,000 AF annually and an existing IID-MWD conservation transfer of 110,000 AF annually. An additional 94,000 AF of water will be made available by the lining of the All American and Coachella canals -- 16,000 AF of which will be used to provide supplies for the San Luis Rey Indian water rights settlement. Congress authorized the canal linings several years ago, and the California Legislature appropriated $200 million for the project in 1998.

The exchanges, conservation and transfers in the QSA will generate a total of 539,000 AF of water within California. In addition, the Key Terms of the QSA provide for groundwater management and storage programs and dry-year water transfers that will provide up to 400,000 AF of additional water for urban needs.

Interim Surplus Guidelines

If California were immediately held to its 4.4 MAF Colorado River apportionment, MWD's urban supplies would fall short by approximately 700,000 AF in a normal year. Therefore, the QSA and the California Plan provide for the gradual reduction in California's diversions from the Colorado River over a 15-year period.

California has been able to exceed its apportionment in recent years because the Secretary of the Interior has declared that there are surplus flows on the Colorado. To ensure that surplus water is likely to be available during the 15-year interim period, California agencies asked the Secretary to liberalize the guidelines by which surplus declarations are made. Essentially, this means allowing more water to be drawn out of Lake Mead behind Hoover Dam for use by MWD.

In mid-2000, the Interior Department released draft "Interim Surplus Guidelines" for review by the other six Basin states. The states responded with a stricter proposal of

their own, which was adopted in large part by the Department and issued as a federal regulation in January 2001. These Interim Surplus Guidelines, which are now in place, allow the Secretary to make surplus declarations more often than in the past, thus giving California greater assurance that it will be able to take the extra water it needs during the implementation of the California Colorado River Water Use Plan.

QSA and Interim Surplus Guidelines

The Quantification Settlement Agreement among the California agencies and the Interior Department's Interim Surplus Guidelines are directly linked. This linkage was built into the Interim Surplus Guidelines regulations by the other Basin states, which are impatient with California's over-use of the Colorado River. To ensure that California moves aggressively to implement its plan to live within its basic apportionment, the other Basin states included in the Interim Guidelines specific benchmarks and timetables for carrying out the QSA. The most important of these is a requirement that the QSA be executed by Dec 31, 2002 or the Interim Surplus Guidelines will be suspended.

If the QSA is not implemented on schedule and the Interim Surplus Guidelines are suspended, California would be required to reduce its Colorado River diversions to its basic apportionment of 4.4 MAF during years of normal or below normal flows on the Colorado River (2001 flows were below normal). This would cause a devastating 700,000 AF shortfall in the state's urban water supply.

The parties to the QSA are working to complete federal and state environmental documentation and permits for the IID-San Diego water transfer, the lynchpin of the QSA. The transfer, which could eventually total 200,000 AF annually, must begin in 2003 so that the QSA can be implemented on time. But the environmental permitting process has proved to be more complex than anticipated.

Salton Sea

Currently, the QSA parties and the U.S. Fish and Wildlife Service are focused on the possible impacts that the IID-San Diego transfer may have on protected and/or endangered species at the Salton Sea.

The Salton Sea is a landlocked lake that straddles the Imperial and Riverside County line in Southeastern California. It is sustained almost entirely by irrigation runoff from the IID, CVWD and the Republic of Mexico. Salinity in the Sea is increasing naturally, and it will eventually reach the point where the Sea will no longer be capable of supporting the fish populations on which endangered bird populations depend for food.

Because the water to be transferred to San Diego by IID will be generated by on-farm conservation, less relatively fresh irrigation runoff will be flowing into the Sea. With inflows reduced, the Sea will reach the hyper-salinity point sooner. In 1998, Congress passed the Salton Sea Restoration Act, which required the Secretary of the Interior to propose a plan for restoring the Sea. The Act specified that the plan must take into account reduced inflows resulting from conservation and water transfers. However, the Secretary has not yet submitted a restoration plan to Congress.

Recent Developments

On December 10, 2002, the Imperial Irrigation District Board of directors voted 3-2 not to approve the QSA/water transfer terms produced by the "Hertzberg Process" in mid-October. The principal reasons given by the IID Board for rejecting the transfer included uncertainty over a long-term solution for the Salton Sea; no firm commitment of funding from MWD and other agencies to cover environmental mitigation costs beyond the $30 million committed by IID; uncertainty about Interior Department approval of environmental mitigation measures for the Salton Sea; and a concern that the 75-year term was too long. The Board directed the IID staff to develop a short-term fallowing-based transfer proposal to meet urban needs while a long-term deal was being negotiated.

During the week of Dec. 16, IID and the other three California Colorado River agencies (MWD, SDCWA, CVWD) had discussions aimed at salvaging the transfer agreement, but little progress was made. All parties rejected IID's short-term transfer proposal. The State of California offered to provide funding to assist with mitigation costs, and the following week, IID and SDCWA made progress on a 45-year transfer proposal. On Dec. 27, the Interior Department issued a letter stating that if the QSA were not sighed by Dec. 31, it would invoke a little-know and never-used authority to reduce IID's 2003 water supply by approximately 330,000 acre-feet and give that water to MWD and CVWD. IID said that the action was illegal and that the Department's threat undermined support for a QSA deal because it held out the possibly that urban agencies could receive IID water without and agreement and at no cost.

On Dec. 31, the IID board voted 3-2 to approved a 45-year transfer deal. San Diego County Water Authority voiced support for the deal, but MWD and the Interior Department said the proposal was flawed, in part because it allowed for termination of the QSA in Dec, 2003, if necessary environmental funding were not made available by Oct., 2003.

During the first week of January, the Interior Department suspended the Interim Surplus Guidelines, effectively cutting California's Colorado River water supply to 4.4 million ace-feet. The Department also said that it would carry out its order to reduce IID's 2003 supply by 200,000 acre-feet. On Jan. 10, IID filed suit against the Department, contending that the Department had no legal authority to reduce IID's supply, and even if it did have such authority, the Depatment had violated its own rules in carrying out the decision.

During the week of Jan. 13, IID and San Diego County Water Authority formally agreed to the terms of a 45-year water transfer as approved by the IID Board on Dec. 31. The California Legislature held oversight hearings on the status of the QSA on Jan. 14 and Jan 21. IID and the other California agencies agreed to resume QSA negotiations during the week of Jan 20.

February 28, 2003

Imperial Irrigation District Briefing Paper – QSA background and current status

Introduction – A significant milepost was passed on December 31, 2002 when the Quantification Settlement Agreement (QSA) was not brought to fruition. Although the QSA was approved and executed by the Imperial Irrigation District (IID), for a variety of reasons the QSA was not approved by the Metropolitan Water District (MWD) and the Coachella Valley Water District (Coachella). Failure to have an effective QSA by the end of the year has resulted in a number of water supply related actions that are of great importance to the State of California and to the water agencies in southern California that use Colorado River water. This is also a matter of concern to the other six basin states, and those states will likely be involved when there is an attempt to reinstate surplus water deliveries to southern California if a restructured QSA can be developed and executed in 2003. The purpose of this paper is to briefly explain some of the concepts involved with the QSA and the special surplus water deliveries so as to better understand what is currently underway within California to develop a restructured QSA.

A. Interim Surplus Guideline water – In the mid 1990's the other six basin states and the Department of the Interior jointly informed California of the need for California to end it's reliance on Colorado River water in excess of California's normal year apportionment of 4.4 million acre feet (maf). For many years California was legally able to use up to 800,000 af per year in excess of its entitlement due to the availability of unused water from Arizona and Nevada, or the availability of surplus water due to full reservoirs. This excess water was used by MWD and Coachella, the junior priority users on the California side of the river. However, in the years 1999 and 2000 it became clear that California would be required to cut back its usage, and therefore it would be necessary to put in place a variety of actions that would allow California to live within its 4.4 maf apportionment – hence the development of the QSA Key Terms in December of 2000.

In order to transition to reliance on different water supplies it was recognized that California would need a period of time within which to implement water transfers and other related actions (all set forth in a draft 4.4 Plan for California). As a result, in January of 2001 Secretary Babbitt adopted special Interim Surplus Guidelines (ISG) designed to govern the operation of Lake Mead for a period of fifteen years. The ISG were tied to reservoir elevations and provided for the release of special surplus water to the urban areas of southern California and southern Nevada during the interim period. The ISG did not *guarantee* the delivery of water, but merely provided for releases in specific amounts tied to certain reservoir levels. The logic behind the ISG was that the system reservoirs were full enough to justify the release of special surplus water, during the interim period, as long as inflows remained close to normal and sufficient reservoir levels were maintained.

The ISG also provided that the special surplus releases could be suspended if certain goals were not reached. The first goal was execution of the QSA by December 31, 2002.

The second goal was that California had to demonstrate sufficient transfers of water from the agricultural sector to the urban sector so as to meet specific water use reduction benchmarks tied to specific years. If the QSA was not executed by December 31, 2002 *or* if the benchmarks were not met the terms of the ISG provided for the suspension of the special surplus water releases.

Finally, it is important to note that the special surplus releases provided for under the terms of the ISG provide an incredible benefit to California. It has been estimated that the ISG water going to MWD during the fifteen year interim period is worth as much as $1.8 billion. This is one of the reasons that the State of California is making a very strong effort to negotiate and implement a restructured QSA as soon as possible.

B. Failure to have an effective QSA by December 31, 2002 – For a variety of reasons the goal of having a QSA executed by all three parties – IID, MWD, and Coachella – was not achieved by December 31, 2002. Although IID approved the QSA on December 31, 2002, a number of issues remained unresolved from the perspective of MWD and Coachella. For example, difficulties remained in regard to environmental mitigation costs stemming from the linkage between the QSA water transfers and the proposed reclamation of the Salton Sea. Similarly, MWD and San Diego had unresolved wheeling issues, and it was unclear whether certain state funds could be committed to environmental mitigation costs. In any event, as a consequence of the failure to have an effective QSA in place by the end of the year California's opportunity to use special surplus water in accordance with the guidelines *was suspended* by the Secretary. In addition, the Secretary took administrative action to reduce the amount of water available to IID for 2003 in accordance with certain determinations made by the Secretary in connection with the Arizona v. California decree and regulations contained at 43 CFR Part 417. By reducing the amount of water to be delivered to IID the Secretary was then able to increase the amounts of water going to MWD and Coachella.

C. Current status of QSA negotiations – In early January the Governor of California appointed a number of senior staff to supervise continued negotiations to develop a restructured QSA that would be acceptable to the water agencies, the State of California, the other basin states, and the Department of the Interior. Negotiations are continuing at this time and it appears that good progress is being made toward the resolution of remaining issues. If an agreement can be worked out the state would then take actions within the next few months to allocate state funds and make certain adjustments in existing state laws (via legislative action) and carry out other QSA facilitation actions (via executive branch action) so as to provide for a completed QSA sometime later this year. With an enforceable QSA in hand the water agencies and the state would then seek the support of the other basin states and the Department of the Interior to have the special surplus water releases under the guidelines *reinstated.*

D. Linkage to the Salton Sea – Although not intended in the early formulation of the QSA, the QSA water transfers have become more directly linked to the possible reclamation of the Salton Sea. As originally envisioned, IID was to make conserved water available for transfer to the urban agencies through efficiency water conservation

methods. In other words, IID would use less water to farm the same amount of land. Even though this kind of conservation would mean less water flowing to the Salton Sea, and therefore might have some potential impact on the ecology of the Sea, it was nevertheless assumed that this approach would be acceptable and would represent sound water management through conservation. One primary reason for this assumption was that the Salton Sea Reclamation Act, enacted by Congress in 1998, specifically provided that reclamation alternatives advanced by the Secretary were to be based on the *presumption that there would be reduced inflows in the future.* In other words, Congress recognized the importance of the proposed water transfers and attempted to provide that any Salton Sea reclamation project would not stand in the way of such transfers.

Nevertheless, as the QSA water transfers proceeded toward approval a number of interested parties became much more concerned about the linkage to the Salton Sea – for example, environmental groups and the State of California. This became particularly evident during the State Water Resources Control Board (SWRCB) proceeding (to obtain approval for the IID-San Diego transfer), and during state legislative hearings (to obtain necessary legislative action to facilitate execution of the QSA). This Salton Sea linkage was eventually manifested in the form of provisions in SB 482, enacted by the sate legislature in August of 2002, wherein it was provided that in order to obtain certain environmental clearances under state law the QSA water transfers would need to be structured so as to result in no material impact on salinity at the Salton Sea for fifteen years (it is merely coincidental that this fifteen-year period is similar to the ISG fifteen year period). This new QSA state law based requirement resulted in the use of land fallowing as a conservation method during the SB 482 fifteen-year period. The stated purpose of the fifteen-year period was to give the state sufficient time to work with Congress to develop a long-term reclamation plan for the Salton Sea.

In addition to this point of linkage, it is important to recognize that the SWRCB order approving the IID-San Diego transfer also imposed a number of environmental mitigation requirements on the QSA parties. Some of these requirements are species based, thus fulfilling obligations under the California Endangered Species laws, and some of the species concerned reside at the Salton Sea. However, many of the requirements are not species related, but have to do with matters such as air quality when the Salton Sea begins to shrink in size after transfer year fifteen when IID reverts to efficiency conservation methods. Altogether these types of environmental mitigation costs exceed $120 million, and this then represents one of the significant QSA facilitation hurdles now being addressed in Sacramento.

E. Endangered Species Act compliance – In the context of the QSA there are several important aspects of state and federal ESA compliance that are important for understanding what has happened with the QSA and what needs to be done to develop and approve a restructured QSA.

a) Section 9 – Section 9 of the federal ESA addresses "take" of species (the actual killing of species). It is the potential for take that gives rise to the obligation to comply with state and federal ESA requirements. In this

situation, implementation of the QSA water transfers has been determined by state and federal wildlife agencies to likely result in the take of protected species. Accordingly, compliance with both state and federal ESA requirements is one of the significant regulatory burdens impacting implementation of the QSA.

b) Section 10 – Section 10 of the federal ESA is designed to cover circumstances where entities that are private in nature, or not directly connected to the state of federal government, are attempting to comply with the ESA. Because of the need to carry out actions within its service area to conserve water, and because of the potential for such actions to impact species at the Salton Sea, IID has from the outset been planning to develop for approval by the wildlife agencies what is known as a Section 10 *Habitat Conservation Plan* (HCP). The IID HCP was designed to be broad in scope, covering as many species as possible and providing IID with long term ESA protection during the life of the QSA transfers. The HCP would also provide for the kinds of regulatory assurances that come with Section 10 compliance. Completing the HCP is still part of the plan for eventual implementation of the QSA. However, in recognition of the time period necessary to properly complete the HCP (maybe a year or more), the future obligation of the agencies to coordinate to complete the HCP has been provided for in contract language contained in the Environmental Cost Sharing Agreement, one of the subordinate QSA agreements. Compliance with state law would be carried out in parallel fashion.

c) Section 7 – Section 7 of the federal ESA applies to situations where federal agencies are carrying out actions that may affect species, and Section 7 also applies to voluntary programs to conserve protected species independent of any planned federal actions. In the summer of 2002 it became apparent to the Bureau of Reclamation and the US Fish and Wildlife Service that the Section 10 HCP approach under development at that time *could not be completed* within the time remaining before the December 31, 2002 deadline. Accordingly, BOR and FWS made a proposal to the water agencies (IID, MWD, Coachella, and San Diego) that BOR would undertake a narrow, voluntary Section 7 species conservation program so as to provide necessary ESA compliance so that the QSA could be executed before the end of 2002 (focusing on listed species at the Salton Sea and in the IID service area). With agreement from the water agencies, BOR proceeded to develop this alternative ESA compliance process, recognizing that parallel state compliance could be carried out in a similar manner. Toward the end of 2002 BOR and FWS were in the process of completing the Section 7 compliance process. It is expected that this Section 7 approach will be used in 2003 for state and federal ESA compliance purposes, so as to support timely execution of the restructured QSA, even though a Section 10 HCP will eventually supplant the Section 7 compliance product.

F. Secretarial Implementation Agreement – The Secretarial Implementation Agreement (SIA) is one of the many documents that must be executed in parallel with the QSA for the QSA to become effective. The SIA is the document to be signed by the four water agencies *and the Secretary* that will establish the framework within which the Secretary will undertake water delivery and water accounting adjustments so as to implement the water transfer terms of the QSA. The SIA addresses such matters as changing the point of diversion for the IID-San Diego transfer water from Imperial Dam to Lake Havasu (the site of the MWD intake). The SIA also addresses matters related to the transfer of the conserved All American Canal water and changes in accounting for the 1988 IID-MWD conserved water.

A matter of importance to IID is that the SIA addresses some critical water rights protection issues deemed necessary by IID in light of the land fallowing that must take place during the first fifteen years of the QSA (so as to maintain salinity levels at the Salton Sea in accordance with the new state law). Similar to what is provided for in SB 482 (enacted by the state legislature last summer and expected to be reenacted this year to facilitate implementation of the restructured QSA) the SIA provides that IID will not be at risk in losing or otherwise jeopardizing its water rights by engaging in land fallowing and providing mitigation water to the Sea. These important provisions of the SIA were finalized in late December among the four water agencies and officials at the Department of the Interior. However, as a result of the failure to have an effective QSA by the December 31, 2002 deadline the Department of the Interior sent a letter to the water agencies (on January 16th) suggesting that some of these agreed-to provisions *might now be withdrawn by Interior*. Such action would seriously jeopardize the current effort to develop and implement a restructured QSA in 2003, which will be dependent on execution of a SIA in the form agreed to by the parties in late December of 2002.

G. 2003 water year cutback imposed on IID – On December 27th water agencies in California, Arizona, and Nevada received letters from the Department of the Interior regarding allowed water uses in 2003. *IID was the only agency that received a cutback in its water supply from Interior*. All other agencies in the three states received what they ordered, or received *more* than what they expected to receive (for example, MWD). The letter sent to IID informed IID that Interior would impose a different result in regard to IID's 2003 water order *depending on whether the QSA was executed by December 31, 2002* (if the QSA was executed IID's water order for 3.1 maf would be honored, but if the QSA was not executed IID would be limited to 2,858,900 af for 2003, and the water taken from IID would be shifted to MWD and Coachella). Interior's actions were based essentially upon two points of foundation: 1) the use of certain federal regulations contained in 43 CFR Part 417 designed to address annual water uses by individual Indian and non-Indian water users in the lower basin; and 2) Interior's interpretation of the terms of the Supreme Court's 1979 supplemental decree in the case of Arizona v. California. Although not set forth in the 1979 decree, Interior extrapolated a per acre water duty allegedly stemming from IID's adjudicated Present Perfected water right dating back to 1901, and then applied that water duty to IID's entire Colorado River entitlement. Even though the Part 417 regulations provide for a process of notice, opportunity for response, and appeal, Interior chose to short-cut that process by making its decision at the

Secretarial level and thus eliminating any opportunity for IID to administratively submit evidence and appeal Interior's decision.

H. IID's lawsuit against Interior – On January 10th IID filed an action in the US District Court in San Diego against Interior and some of its officials. The suit set forth a number of counts, or allegations of wrong-doing on the part of the government, covering matters such as: 1) Interior did not have the authority to cut-back IID's water use for the 2003 water year; 2) Interior did not follow the regulations in Part 417, and the Part 417 regulations may not be valid regulations (lack of underlying authority); 3) Interior's actions constitute a taking of IID's property rights; 4) Interior's actions constitute a breach of IID's water delivery contract with the Secretary; and 5) Interior failed to comply with applicable environmental laws in taking action to cut-back IID's water supply.

On January 27th IID filed a Motion for a Preliminary Injunction, seeking to have the court enjoin Interior's actions and reinstate IID's water supply during the period of time until the lawsuit can be resolved. The injunction motion has been set for hearing on March 18th. Even if the injunction is not granted, the court could still rule in IID's favor after considering all of the evidence and the applicable law and rendering a final decision sometime later this year. The injunction motion is intended to obtain *interim relief*, prior to a final decision on the merits by the court, so that IID's farmers would be able to use all of the water legitimately ordered for 2003. IID's injunction motion and corresponding documentation attempts to explain to the court that a cut-back of the magnitude imposed by Interior will bring irreparable harm to farmers in the Imperial Valley.

MWD and Coachella moved to intervene in the litigation. On February 21st the court granted the motions to intervene, so that now MWD and Coachella will be parties to the suit on the side of the federal government.

I. Federal regulations at 43 CFR Part 417 – The regulations contained in 43 CFR Part 417 are part of the few regulations in the federal law relating to the functions of the Bureau of Reclamation. Adopted in the 1970's, the Part 417 regulations set forth a process of consultation between BOR and lower basin water users in regard to water conservation opportunities, and further provide that the regulations allow BOR to make "annual determinations of each Contractor's estimated water requirements for the ensuing calendar year ....." The regulations are allegedly based on authorities provided to BOR in the Supreme Court's Arizona v. California decision and decrees, and in the Boulder Canyon Project Act of 1928 (43 USC 617 et. Seq.). IID's lawsuit against Interior challenges the validity of the Part 417 regulations, asserting that nothing in the Supreme Court's decrees or the Boulder Canyon Project Act provide specific authorization for such action by BOR, and certainly do not authorize BOR to function as the "policeman" for the lower basin.

The Part 417 regulations set forth a process whereby the water user is to be given notice of BOR's determination of water availability for the ensuing year. That determination is to be based on factors outlined in the Bureau's decision, including factual matters such as

crops to be grown, growing conditions such as climate, conditions of the water distribution systems and related facilities, operating practices, and similar information. If the determination from BOR includes a *reduction* in the amount of water to be delivered, the water user is to be given notice, by registered or certified mail, and then the water user is given an opportunity to respond. If the Bureau does not change its determination the water user is allowed to appeal the determination to higher authorities, and during the time of that appeal the Bureau's determination "shall be of no force and effect." 43 CFR Part 417.3. Part of what IID alleges in its suit is that the Department of the Interior did not follow its own regulations in taking action to cut-back IID's water supply for 2003.

J. Forbearance proposal – One of the complicating developments in obtaining community and Board of Directors support for the QSA within the IID service area has been the development of various farmer groups. Some of the groups are supportive of transfers and some of the groups are not. One group in particular has been critical of IID's management of the QSA process and has suggested that they would prefer to deal directly with MWD or San Diego. In that direction, one idea that has surfaced is the notion of landowners agreeing in contract to forebear the use of a certain amount of water, presumably through land fallowing. If that were done, and that water was not ordered by IID for those fallowed acres, the notion is that such water could then be delivered to the MWD intake as opposed to Imperial Dam. Thus, the theory is that by agreeing to simply not order and use water landowners might be able to carry out a form of water transfer without the involvement if IID.

IID has objected to this kind of transfer on the grounds that IID holds the valley's water rights in trust for all landowners. Hence, it is IID's position that only IID can legally and effectively carry out a transfer to the urban users. IID also asserts that the forbearance approach fails to properly address necessary environmental compliance requirements, and does not adequately address third party economic impacts resulting from land fallowing. In any event, it does not appear that any of the farmer groups or the urban users are actively pursuing a forbearance type transfer at this time.

Actions needed at the state and federal levels to effectuate a restructured QSA:

1. Maintain support for the current strong efforts of the State of California to help negotiate a restructured QSA. This includes encouragement for all four of the water agencies to stay at the table and stay committed to the process.

2. Following development of an agreed-to restructured QSA, allow time for the State of California to take the necessary actions, both legislative and administrative, to provide the necessary state-law foundation for the restructured QSA.

3. Following execution of the QSA and the completion of state actions necessary for the restructured QSA to become effective, support California in having the special

ISG water releases reinstated. This will require attention and support from the other six basin states.

4. At the same time as the ISG provisions are reinstated, encourage a settlement between the parties in the litigation so that the litigation may be withdrawn and IID's full 2003 water supply restored.

Imperial Irrigation District QSA Briefing Summary March 3, 2003

- The QSA was not executed by all parties prior to the December 31, 2002 deadline. This has resulted in significant water supply impacts for southern California. Some of the important concepts involved in the QSA effort are summarized below.

- The Interim Surplus Guidelines (ISG) water provided significant benefits to southern California, but such special surplus water releases were tied to execution of the QSA by 12/31/02 and meeting certain water transfer benchmarks. As a result of the failure to meet the deadline, the special ISG water releases have been suspended.

- The State of California is presently devoting considerable time and effort in helping to negotiate a restructured QSA. The state has expressed a willingness to bring state resources to the table to facilitate agreement. If a restructured QSA is developed and agreed to, state legislative and administrative actions will be needed to provide the necessary state-law support for a restructured QSA.

- As a result of a variety of factors, including the enactment of new state law, there is now greater linkage between the QSA water transfers and the effort to reclaim the Salton Sea. In addition, QSA transfer mitigation requirements connected to the Salton Sea present part of the QSA financial burden that the state and the QSA parties are attempting to address.

- State and federal Endangered Species Act compliance is a necessity for any restructured QSA. Initial ESA compliance will be through a Section 7 compliance process carried out primarily by the Bureau of Reclamation. Later in time the Section 7 process will be supplanted by a Section 10 Habitat Conservation Plan (HCP) to be developed by IID and the other QSA parties.

- The Secretarial Implementation Agreement (SIA) is one of the key documents that is necessary to have a binding QSA. The terms of the SIA were worked out among the QSA parties and the Department of the Interior in late December. Adherence to those terms will be essential if a restructured QSA is to become effective.

- Interior took action in late December to cut-back IID's water supply for the 2003 water year. Interior's actions have been challenged by IID in federal court. MWD and Coachella have intervened in the case on the side of the government. IID's motion for a preliminary injunction against Interior will be heard on March 18th.

- Actions needed at the state and federal levels to support a restructured QSA:
1) Maintain support for the strong efforts of the State of California to help negotiate a restructured QSA; 2) Following development of a restructured QSA, allow time for the state to carry out legislative and administrative actions to provide the necessary state-law support for the QSA; 3) When the restructured QSA becomes effective, support California in having the special ISG surplus water releases reinstated; and 4) help support a peaceful resolution of the litigation and restoration of IID's full 2003 water supply.