

Testimony of John P. Carter  
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Regarding H.R. 5123

Before the

Subcommittee on Water and Power

of the

Committee on Resources  
U.S. House of Representatives

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IID'S SUPPORT OF HR 5123

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide testimony at this important hearing on HR 5123. The Imperial Irrigation District (IID) supports HR 5123

because it would ensure timely implementation of the Quantification Settlement Agreement and provide the resources and certainty necessary to address environmental concerns associated with the Salton Sea. IID commends Representative Hunter for his tireless efforts on behalf of the people of the Imperial Valley, and we look forward to working with him and the Subcommittee to refine HR 5123.

As you are aware, HR 5123 is an important part of the effort to implement the California Colorado River Water Use Plan. In attempting to implement the California Plan the state is facing some very serious water management questions. IID has been working closely with the Department of the Interior and the State of California so as to bring success to that effort. But, as will be explained below, a number of factors have made this an exceedingly difficult challenge. The points we wish to make in this testimony are summarized as follows:

- IID committed to the QSA water transfers on the basis of carrying out efficiency conservation within the district. IID remains committed to that efficiency conservation approach.
- Efficiency conservation is good for the Imperial Valley economy and complies with state and federal goals to conserve water whenever possible.
- A Salton Sea reclamation plan was to have been proposed and implemented prior to the implementation of the QSA water transfers. Failure to follow that approach now places the burden of Salton Sea endangered species problems on the back of the QSA water transfers.
- In passing the 1998 Salton Sea Reclamation Act Congress encouraged efficiency-based water transfers and required the government to assume reduced inflows in developing reclamation alternatives.
- Forcing IID to adopt a long-term fallowing program so as to transfer water to the urban area and maintain baseline inflows to the Salton Sea places an inappropriate burden on the people of the Imperial Valley and is therefore unacceptable.
- All interested parties must now explore all viable alternatives for securing timely implementation of the QSA, including enactment of HR 5123.

Let me first make reference to testimony provided by IID before the California State Water Resources Control Board on November 14, 2001. That testimony (copy attached) provides helpful background information as to IID's water entitlement and IID's history of involvement in attempting to help its urban neighbors with their long-term water supply needs. In order to save time I will not restate that background information here.

### IID'S COMMITMENTS

Instead, and with that background in mind, it is important to begin with an understanding that IID has committed to a set of water transfer agreements and that IID *remains committed* to those agreements. In 1998 IID entered into an agreement with the San Diego County Water Authority (SDCWA) for the

conservation and transfer of up to 200,000 acre-feet (af) of conserved water, with an option for another 100,000 af at IID's discretion. The IID-San Diego agreement was expressly based on the concept of efficiency conservation within IID. In other words, the basis of the agreement was that IID would use less water to farm the same amount of land – thus providing the urban area with a critical water supply while preserving and enhancing the agricultural economy of the Imperial Valley. The water conserved on-farm and within IID's delivery system would be transferred to the SDCWA, and the SDCWA would pay IID for the use of that water for a period of years.<sup>[1]</sup> Also, within the terms of the IID-San Diego agreement IID made the commitment to devote \$32.4 million (2002 dollars) to mitigated present and future transfer-related environmental impacts at the Salton Sea and in the Imperial Valley.

Importantly, the IID-San Diego agreement was based on the notion that land fallowing would not be employed as a conservation method. In fact, the agreement expressly provided that in IID's water conservation agreements with the farmers land fallowing would be *prohibited*. In addition to avoiding fallowing there were numerous other benefits of the IID-San Diego agreement. For example, the infusion of money into the Imperial Valley economy would stimulate business activity and create jobs in the county with the highest unemployment in the State of California. Also, the implementation of water conservation measures, both on-farm and delivery system, would increase IID's water use efficiency ratings. Although IID's water use efficiencies are very high, especially in comparison to other districts in this southwest region, others have claimed that IID does not use all of its water entitlement reasonably. Implementation of on-farm and delivery system improvements would resolve that issue.

The IID-San Diego agreement was truly a “win-win” arrangement. The southern California urban area was to obtain a much needed senior priority water supply for a period of up to 75 years, and IID and its farmers were to obtain the money necessary to implement more expensive water conservation measures, while at the same time enhancing the Imperial Valley economy. IID was committed to this arrangement in 1998 and it remains committed to this arrangement today.<sup>[2]</sup>

## DEVELOPMENT OF QSA

What happened after 1998 is all part of the exceedingly complex history of events that has been on the one hand interesting but on the other hand very frustrating from IID's perspective. Because of the long history of tension between IID, the Metropolitan Water District (MWD), and the Coachella Valley Water District (CVWD), it became clear that the IID-San Diego agreement could not be brought to fruition absent litigation or a broader settlement of differences among the four water-using agencies. As a result, and with the help of Secretary Babbitt, Deputy Secretary David Hayes, and California Department of Water Resources Director Tom Hannigan, the four agencies worked out an historic settlement agreement entitled the Quantification Settlement Agreement (QSA).

In October of 1999, IID, MWD, and CVWD agreed to Key Terms that would be the foundation for the QSA. The QSA obviously could not be executed in the absence of both state and federal environmental compliance, but the parties expressed their commitment to implement the QSA as a foundation of the development of the California Colorado Water Use Plan that envisioned the reduction of California's Colorado River use down to 4.4 maf per year.

A cornerstone of the QSA is the agreement of the parties to quantify, for a period of years, the entitlements of IID and CVWD. That quantification goes hand-in-glove with the proposed water transfers

by allowing authorities and interested parties to more easily verify and account for the water savings to be carried out as a part of the QSA. Another cornerstone of the QSA was resolution of some long-standing disputes between IID and CVWD. The QSA provides for the transfer from IID to CVWD, during the period of the QSA, a total of 100,000 af of conserved water. That agreement resulted in a decrease in the potential amount to be transferred to the SDCWA (down to a maximum of 200,000 af). Along with the lining of the All American Canal and other miscellaneous transactions, the QSA provides for a total of about 500,000 af of conserved water to be transferred from the agricultural sector (IID) to the MWD and CVWD service areas.

### INTERIM SURPLUS GUIDELINES

One important consequence of the QSA Key Terms was the public demonstration that California was serious about addressing its overuse of Colorado River water. As a result, and with the cooperation and approval of all seven of the basin states, Secretary Babbitt adopted special operating guidelines for the operation of Lake Mead (January 2001 Interim Surplus Guidelines – ISG). The ISG provide for the release, over a fifteen year “California water diet” period, of special surplus water from Lake Mead primarily for the benefit of the southern California and southern Nevada urban areas. In other words, the availability of this special surplus water is what will allow California the time within which to implement the QSA, transfer conserved water from the agricultural area to the urban area, and move toward an overall water use of 4.4 maf, which is California’s basic Colorado River water entitlement. [\[3\]](#)

In the context of this broader picture of the QSA and the California Plan it is critical to appreciate the value of the ISG special surplus water that is currently being provided through MWD to the 17 million people within the MWD service area. The ISG do not impose any cost on MWD for the special surplus water. As a result, if carried out over the 15 year ISG period the present value of the special surplus water to MWD is approximately \$1.8 billion. This significant benefit is largely a reflection of the largess of the Secretary and the other six basin states. [\[4\]](#)

In crafting the terms of the ISG the Secretary and the other six basin states nevertheless expressed distrust of California’s commitment to reduce its use to 4.4 maf per year. As a consequence, the ISG provide that if certain transfer benchmarks are not met, and if the QSA is not executed by December 31, 2002, the special surplus water provisions in the ISG will be suspended and a more conservative method of operating Lake Mead will be imposed. Stated differently, if the California parties cannot bring about the execution of the QSA by the end of this year, the benefits of the ISG will be suspended and California will be facing some very serious water supply challenges.

### CONSTRAINTS ON THE TRANSFERS – THE SALTON SEA

With all of this background in mind, maybe one would be inclined to say: “ok, so let’s move water from the agricultural sector to the urban sector – what’s so difficult about that?” The answer is the Salton Sea. Although IID is very familiar with the Salton Sea, others in California and around the nation are much less familiar. As a result, it simply was not appreciated by many interested parties, at the time of the IID-San Diego agreement or at the time of the development of the QSA Key Terms, that the Salton Sea would present such a huge point of difficulty for these water transfers. This has become particularly clear during the proceedings before the California State Water Resources Control Board (SWRCB) where the QSA transfers have been submitted for approval.

As you are aware, in 1998 Congress addressed the possible reclamation of the Salton Sea by directing the completion of certain studies and reports as a function of the Salton Sea Reclamation Act of 1998 (P.L. 105-372). Although there are many points of motivation behind the 1998 Act, one key point is that the Salton Sea has become an important component of the Pacific Flyway. As explained in the SWRCB proceedings, because urban southern California has eliminated most of its original wetlands and waterways the Salton Sea has become important substitute habitat. During much of the year many species of birds depend on the habitat of the Sea as they carry out annual migrations or as they move from nesting places to feeding places.

The magnifying glass of attention focused on the Sea has brought to light that it is less polluted than most people feared, that it is an exceedingly productive fishery, and that it has many characteristics that were misunderstood over the years on the basis of misinformation. However, the SWRCB proceeding also verified that the Sea is in a state of natural decline that is consistent with how the Sea has been filled by flooding events and then depleted by evaporation over eons of time. Since the Sea has no outlet, and no source of fresh water other than agricultural and municipal return flows, the salinity of the Sea will increase over time until the fishery is lost and the birds move on to other habitats. As noted before the SWRCB, some fish species will likely be eliminated within 13 years, and the tilapia (the most salt-tolerant) will likely be eliminated by 2023.

It is in the face of this declining habitat, and the lack of a long-term Salton Sea reclamation program, that the QSA water transfers intersected with the Salton Sea. Facing the need for endangered species permits from both the federal and state governments, and facing the allegation that the QSA transfers would accelerate the decline of the Salton Sea, the QSA parties and the state and federal agencies set about the process of trying to obtain Endangered Species Act (ESA) and California Endangered Species Act (CESA) compliance to allow the QSA transfers to proceed. That effort has essentially been a failure, and has therefore caused many parties to suggest a radically different approach to the QSA water transfers that would result in enormous socio-economic impacts on the people of the Imperial Valley.

### SALTON SEA RECLAMATION ACT OF 1998

As you are aware, in 1998 Congress addressed the possible reclamation of the Salton Sea by directing the completion of certain studies and reports as a function of the Salton Sea Reclamation Act of 1998 (P.L. 105-372). Although there are many points of motivation behind the 1998 Act, one key point is that the Salton Sea has become an important component of the Pacific Flyway. As explained in the SWRCB proceedings, because urban southern California has eliminated most of its original wetlands and waterways the Salton Sea has become, in effect, southern California's mitigation bank.

It is important to emphasize that the 1998 Salton Sea Reclamation Act was intended to produce the foundation for a reclamation project that would *precede* the implementation of the QSA water transfers. In fact, in passing the 1998 Act Congress *expressly recognized* the importance of the water transfers and *expressly recognized* that the QSA transfers would impact the Salton Sea by reducing inflows. Section 101 (b) (3) of the 1998 Act provides as follows:

**ASSUMPTIONS.** – In evaluating options, the Secretary shall apply assumptions regarding water inflows into the Salton Sea Basin that encourage water conservation, account for transfers of water out of the Salton Sea Basin, and are based on a maximum likely reduction in inflows into the Salton

Sea Basin which could be 800,000 acre-feet or less per year.

It is therefore clear that the Salton Sea reclamation program was to have unfolded in the context of reduced inflows to the Sea. Congress recognized, as did IID and the other QSA parties, that the water transfers were of paramount importance and that any Salton Sea reclamation program would simply have to be developed on the basis of assumed reduced inflows. Indeed, it bears repeating that such an assumption *is now a part of the federal law*.

### EFFICIENCY-BASED CONSERVATION vs. FALLOWING

Nevertheless, as the state and federal wildlife agencies failed to approve mitigation plans for endangered species law compliance, and as we approached the ISG deadline of December 31, 2002, some interested parties began to ignore the terms of the 1998 Act and simply concluded that there was only one way to carry out the QSA transfers while maintaining inflows to the Sea -- massive land fallowing within IID. This idea has now taken root within the environmental community, some members of the Salton Sea Authority, local water agencies in line to receive water from the transfers and ISG, and in some parts of the federal and state governments.

It is not necessary to devote a great deal of time to the conclusion that a large long-term land fallowing program is not in the best interest of IID or the Imperial Valley community. But it is important to emphasize that a program to create 300,000 af of water for transfer, and the additional water needed to provide mitigation inflows to the Salton Sea, would require the fallowing of about 75,000 acres of productive farmland. This amounts to about 110 square miles of land. Instead of providing for an infusion of jobs and economic stimulus into the local economy (as with efficiency conservation), land fallowing would result in a significant loss of jobs and significant third party impacts. The economic impact on the Imperial Valley would be the loss of thousands of jobs and hundreds of millions of dollars of lost local income.

IID also asserts that the main impact of the California Plan, and the need to reduce usage to 4.4 maf per year, is on junior water right holders within California as opposed to IID. Accordingly, one option is for the junior right holders to *reduce their water uses* in order to match their reliable water rights. IID suggests that if such agencies instead turn for help to a senior water right holder, like IID, it should not be on the basis of forcing reduced use (such as with fallowing) but should be on the basis of the creation of a new supply without a reduction in farming.

Nevertheless, for a period of time IID attempted to understand this shift in thinking toward fallowing and even went so far as to suggest that if certain protective actions were taken a land fallowing program might be given serious consideration. However, several factors have now demonstrated that this is not a viable path. For example, it has become clear that mitigation for impacts to people is exceedingly difficult to understand and accomplish, and in fact the national track record for such efforts is very poor. Also, it became abundantly clear that the urban water agencies and the State of California were unwilling to recognize the need to develop and fund a meaningful socio-economic impacts program for the Imperial Valley. Along with other factors, these influences have convinced IID and the Imperial Valley community that a long-term fallowing program is not a viable option. IID is unwilling to put the Imperial Valley at risk to benefit others.

### HR 5123 PROMOTES EFFICIENCY-BASED CONSERVATION

This background brings us to the consideration of HR 5123. There are several components of HR 5123 that are consistent with IID's perspective regarding this whole water transfer matter. For example, HR 5123 reflects the notion that the Salton Sea reclamation program was to have been developed ahead of the QSA water transfers. Had that been done, the intersection of the transfers with the Salton Sea would have resulted in a much different analysis and much less of an endangered species compliance burden. Following this perspective, HR 5123 quantifies the contribution of the four water agencies and then provides environmental clearance for the water transfers (Section 4 (a) (2)). We see this as a positive recognition of the interplay between the 1998 Salton Sea Reclamation Act and the QSA water transfers.

Another example is that portion of HR 5123 (Section 4 (b)) that provides long-term assurances to the QSA parties. IID has long been on record that it will not accept long-term future risks under either the federal ESA or the state CESA. IID is attempting to be a good neighbor in facilitating the transfer of about 500,000 a/f to the MWD and CVWD service areas, but IID will not put itself in a position of risk in regard to future endangered species-related problems that might arise in the context of the QSA water transfers. HR 5123 attempts to address these important concerns.

While we will have some amendments to propose at the appropriate time these examples demonstrate that HR 5123 is oriented in the right direction and attempts to address some of IID's fundamental concerns. Most importantly, however, HR 5123 is aimed at supporting the foundational concept behind all of the QSA water transfers -- *efficiency conservation within IID*. Unlike legislation currently under consideration in the California legislature, HR 5123 does not attempt to force IID and the Imperial Valley community to accept a long-term fallowing program. Rather, HR 5123 respects the terms of the IID-San Diego agreement, the provisions of the QSA Key Terms, and the requirements of the 1998 Salton Sea Reclamation Act.

## DOI'S SECTION 7 EFFORTS

In the face of the impasse over the solutions to the Salton Sea, the Department of the Interior (DOI) has announced that it will attempt to comply with the Endangered Species Act for the QSA water transfers through the use of the Section 7 consultation provisions of the ESA. Under this approach, DOI and the Bureau of Reclamation, along with the four water agencies, will be exploring the feasibility of obtaining ESA and CESA compliance with a focus on a much smaller number of species. IID appreciates the efforts of Secretary Norton and Assistant Secretaries Raley and Manson in attempting to find innovative ways to bring about implementation of the QSA water transfers on the basis of our original contract commitment -- efficiency conservation. At the same time, IID is not willing to assume the risk that additional mitigation costs might be imposed on IID as a result of future unforeseen circumstances (such as the listing of new species or the need for reconsultations). Either the federal government and/or the urban water agencies need to take responsibility for such risks.

Even though the Section 7 approach may be consistent with the orientation of HR 5123, we are also concerned that a Section 7 approach may only be a partial solution. The California Endangered Species Act imposes independent, and more stringent, regulatory requirements on the QSA water transfers. Thus, it will need to be determined if the State of California is willing to cooperate in facilitating the Section 7 approach by providing parallel clearance under California law.

## CONCLUSION

In summary, let me explain that this has been a long and frustrating road for IID. On many occasions IID has been singled out as the entity that has not been cooperative enough or has otherwise made the process difficult. We strongly disagree with these characterizations and assert that such characterizations merely reflect the attitude that IID has not been willing to compromise its principles solely for the benefit of others. As noted at the outset, IID remains committed to the IID-San Diego agreement, remains committed to the Key Terms for the QSA, and remains committed to the California Plan. IID has devoted countless hours to this process and has spent millions of dollars to ensure success without one dime in transfer revenue income. What IID will not do is sacrifice the Imperial Valley economy for the benefit of others.

IID also appreciates the difficult situation presented by the Salton Sea. But the issue here is really relatively simple: which is more important to California -- the QSA water transfers and the success of the California Plan, or maintaining baseline inflows to the Salton Sea? What is clear is this -- IID and the Imperial Valley community will not carry the burden for California to have both. IID will not approve a long-term land fallowing program to provide water to SDCWA, MWD and CVWD and at the same time maintain baseline inflows to the Salton Sea. <sup>[5]</sup> That is not what Congress envisioned in 1998 and that would be contrary to what was enacted into federal law. If California desires to maintain inflows to the Salton Sea then it should work with the urban water agencies to figure out how to conserve water in the urban areas and/or develop new supplies that do not rely upon IID, thereby maintaining the status quo as to Salton Sea inflows.

In the end all IID can do is maintain its commitment to the win-win agreements it developed with its water agency partners. If the interested parties are also committed to those agreements then they will need to find a way to allow the efficiency conservation foundation of the QSA water transfers to be maintained. This may require significant political will on the part of the federal government and the State of California. In any event, IID stands ready to cooperate to implement the QSA water transfers as originally envisioned while continuing with the business of farming some of the most productive farmland in the world.

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<sup>[1]</sup> Efficiency water conservation within IID, either on-farm or delivery system, will result in less runoff to the Salton Sea. The Sea is maintained by agricultural and municipal return flow from the Imperial, Coachella, and Mexicali valleys. By far, IID's agricultural return flow is the most significant component of inflow into the Salton Sea. Any efficiency conservation within IID will result in a one-for-one impact on inflows to the Sea. In other words, each acre foot of water conserved within IID means one acre foot less flowing to the Salton Sea.

<sup>[2]</sup> In regard to price IID provided to the SDCWA pro-forma projections of the costs of the water conservation measures likely to be employed by IID and the Imperial Valley farmers. The SDCWA verified those cost projections and the cost per acre foot for the conserved water was thereafter agreed to. That cost is around \$250 per acre foot in the early years of the transfer agreement.

<sup>[3]</sup> The ISG expressly do not *guarantee* the delivery of this water during the 15 year transition period. Instead, the guidelines are tied to reservoir elevations and the overall hydrology of the system. In other words, if Lake Mead stays relatively full, the special surplus



water will be provided to MWD. However, if the reservoir goes below certain elevation levels the special surplus water is reduced in a step-down fashion. Because of the prolonged drought in the Colorado River basin it is possible that the self-executing provisions of the ISG will cut off most of the special surplus water deliveries to MWD regardless as to whether the QSA is executed and implemented.

[4] Although California does not contribute any water to the Colorado River it has more of an entitlement to the river than any other state. For example, the State of Colorado, where about 70% of the river water originates, has a smaller entitlement than California. These facts tend to support a psychological perspective that is not always in California's favor. Thus, the terms of the ISG represent a huge victory for the California urban area -- but that victory is tied to successful implementation of the QSA.

[5] It would be ludicrous to suggest that Imperial Valley farmers should fallow land so that their farming neighbors at CVWD can continue to farm or build more golf courses. That proposition is simply unacceptable. If water is to move from IID to CVWD, under the QSA or any other arrangement, such water will need to be developed via efficiency conservation within IID.