Collaboration on the Colorado River: Lessons Learned to Meet Future Challenges

Testimony of
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I am Brian Brady, general manager of the Imperial Irrigation District, and I want to thank the chair and members of the subcommittee for allowing me to testify at today's field hearing. I believe this hearing is both timely and responsive to the overarching public policy goal of developing consensus and forging a sustainable future among all water users in what has been called the era of limits on the Colorado River.

The Quantification Settlement Agreement, which was signed in 2003 and authorized the nation's largest agricultural-to-urban water transfer, recognized that a new paradigm would be needed to establish a sense of equilibrium on the oversubscribed river system. In short, it promised peace on the river at a time when uncertainty and distrust were the order of the day. Over the course of many years – and marathon negotiations between the QSA parties – it achieved a delicate balance of regional and interstate accommodation that led to the landmark water-sharing agreement we have today.

That agreement remains the linchpin of California's commitment to living within its legal entitlement of 4.4 million acre-feet of water per year from the Colorado River. And it continues to serve as a model of collaboration among competing interests up and down the river system, a compromise in the best and truest sense of the word.

In the Imperial Valley, where the QSA and its water transfers have always been seen, at best, as a necessary evil, IID is satisfying its obligations under the agreement through the fallowing of farmland, a controversial practice that was foisted on the district by the state of California as a means of mitigating its effects on the Salton Sea. We are almost seven years into the agreement and, as such, are nearing the halfway point of the initial 15 years of fallowing and the conversion, in 2017, to efficiency-based conservation measures. By that time, the state was to have adopted and funded a preferred restoration alternative for the sea, and fallowing as we know it would no longer be required.

As this subcommittee is aware, the validation of the QSA sought by IID and its urban partners was denied in Sacramento Superior Court and that ruling, as well as a stay of this decision, is now before the 3rd District Court of Appeals. The basis of the court's ruling at trial was that a single provision of the agreement dealing with the state's responsibility to mitigate impacts to the Salton Sea beyond $133 million was unconstitutional. While IID believes that the judge erred in ruling as he did, and it has joined with other QSA parties, including the state, in appealing the decision, the district and its water users obviously find themselves in the untenable position of being between a rock and a hard place.

Or, more accurately, between the devil and the Salton Sea.

That's because the federal government has asserted that its contract with IID is legally enforceable, regardless of the court's ruling in the QSA coordinated cases or the outcome of the appeal. Meanwhile, we have fallowing contracts with landowners in the Imperial Valley that could, if a stay isn't granted by the appellate court, generate tens of thousands of acre-feet of water for transfer without the revenue to pay for it or the urban partner to receive it.

A couple of the sample questions provided by your staff in advance of this hearing had to do with the historical importance of the QSA and what, if any, role should be assumed by the Secretary of the Interior, as watermaster of the Colorado River, in response to the precarious set of facts that now threatens its existence. Clearly, the federal government has an abiding interest in ensuring that the QSA and its water transfers remain in force; after all, it was the Interior Department that essentially

brokered the current agreement, and its use of the reasonable-and-beneficial stick rather than the cooperative carrot won't soon be forgotten in the Imperial Valley.

For this reason, I do not see the federal government taking an activist role in the QSA proceedings now before us. The immediate problem is one for the affected water agencies and the state to rectify, and if, as I believe, the agreement is vital to all concerned then it is incumbent on each of them to address any deficiencies in it, whether real or perceived.

For its part, IID will continue to meet its transfer and mitigation obligations under the QSA and work to preserve the right to do so throughout the pendency of its appeal. But the district won't limit its advocacy of the existing agreement to the courtroom. The IID board committed itself in the aftermath of the invalidation decision to preserve not only its rights but also its options, one of which is to actively pursue an administrative remedy that acknowledges there can be no enduring settlement of longstanding disputes among Colorado River water users within California without a credible resolution of the transfer mitigation question and impacts to the Salton Sea.

There are several lessons to be gleaned from the Imperial Valley's experience with the QSA and its related water transfers:

The first is that the emergence of a true water market has been slow to develop and may not be the most advantageous thing for the area conserving and transferring the water. In theory, water marketing sounds good because it promises a higher price for the water, but in a purely market-driven contest between asphalt and alfalfa, this highest-and-best use argument isn't necessarily a winning one for the host community.

The second is that rural areas like ours have their own plans for the future growth and development of their respective regions. Transfer too much water and you destroy your ability to grow the local economy. In Imperial County, renewable energy holds great promise for economic expansion. The county is already the second leading generator of geothermal energy in the nation and is poised to double that generation in the next five years. Having a firm supply of industrial water for these and other renewable energy projects was the impetus for IID to adopt an interim industrial water supply policy that dedicates 25,000 acre-feet for this purpose over the next decade.

The third is that even the most straightforward transaction is going to be strained by the inequitable relationship between agricultural and urban water uses and needs. The reality is that a partnership among equals isn't possible because of the uneven political and economic factors involved. We have been encouraged at IID by the recent negotiations with the San Diego County Water Authority to reset the price of water, which helped to solve a problem we had been experiencing with a lack of upfront capital to fund needed improvements. What we ended up doing was to move revenue from the later years of the transfer agreement to the earliest ones, a fairly painless process that bodes well for our partnership, I think.

I mention these lessons learned, solely from the Imperial Valley perspective, because it is entirely reasonable to believe there will be more agricultural-to-urban water transfers in the future, not less. It was inevitable that our area would become the proving ground for such water transfers, since the indispensible element on which it depends is located there. But partnerships only succeed if they work for each of the partners.

And the water transfer paradigm of the future is only viable if it works for the Imperial Valley today.