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AIR POLLUTION CONTROL BOARD

(3/18/15) Public Workshop
Salton Sea
Deadline: 3/11/15 by 12:00 noon



March 10, 2015

Via U.S. Post & Email [commentletters@waterboards.ca.gov]
Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

Subject: Comment Letter: Salton Sea

Dear Honorable Members of the State Water Resources Control Board:

Imperial County Air Pollution Control District ("Air District") respectfully submits these comments in response to the State Water Resources Control Board's ("State Water Board") Solicitation of Comments Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013 ("WRO 2002-0013"). The Air District supports Imperial Irrigation District's ("IID") petition to modify Revised Order WRO 2002-0013 "by requiring the State to fulfill its commitment to restoration the Sea as a condition of the QSA transfers." (See IID Petition.)

The Air District further supports IID's request that the State Water Board hold a noticed public workshop process to substantively consider IID's Petition as it did when it first considered IID's transfer application, and to establish procedures for further steps in the process. (Petition, p. 49.) Such proceedings are necessary to foster transparency of the State Water Board's actions and meaningful participation of the affected public in its decisionmaking process. Because these issues are of particular importance to Imperial Valley, the State Water Board should hold future workshops and hearings in Imperial County.

The Air District focuses its comments on the following questions raised by the State Water Board in its Solicitation:

- 1. How can the State Water Board promote implementation of a reasonable and sustainable plan to address the air, wildlife, and water quality problems at the Salton Sea?**

There is no time for more endless studies and debates about how the Salton Sea should be restored. *The mitigation water currently being sent to the Salton Sea will end in a mere 21 months from now.* There are no shortages of restoration plans. The State, the United States Bureau of Reclamation ("Reclamation"), and Salton Sea Authority ("SSA") have developed over nine (9) different restoration plan alternatives. The Natural Resources Agency, the County of Imperial, Air District, IID, and SSA are the proper agencies to identify and prioritize the projects in these various plans. The Air District

suggests that the State Water Board work with these agencies to identify restoration projects that can be immediately implemented, and which will reduce air quality impacts. The longer term planning process discussed in IID's Petition will be important to producing a global plan that can be implemented and funded. But, implementation of restoration projects to address immediate public health concerns should proceed while the longer term planning process is proceeding.

State legislation requires the State to pay the costs of mitigation (above \$133 million in 2003 dollars), with no cap on total expenditures. The legislation also made the State responsible for restoration, which is the preferred means of mitigating air quality impacts. The State's commitments, made after the State Water Board approved WRO 2002-0013, must be incorporated into the order as conditions. The cost of inaction, \$70 billion through 2047, dwarfs the costs of implementing a restoration project now. The inclusion of these conditions will encourage the State Legislature to find the necessary funding to implement the restoration project.

2. If there is a necessary and appropriate role for the State Water Board, what specific issues or obstacles need to be addressed, and in what sequence and timeframe?

The QSA diverts water that would ordinarily flow to the Salton Sea, thereby shrinking the Sea and exposing potentially 86 square miles of playa, slightly smaller than *the size of the entire City of Sacramento*, resulting in toxic-laden dust storms. The fine particulates in the dust (known as "PM10" – particulate matter less than 10 microns in diameter) are a public health concern because these pollutants affect the breathing and respiratory systems, contributing to incidents of asthma in a County with already the worst childhood asthma hospitalization rate in California, and causing lung tissue damage, cancer, and premature death. PM10 can also reduce crop yields causing economic losses to the County and agricultural industry.

New credible evidence proves the assumptions the State Water Board relied upon in approving WRO 2002-0013 were grossly underestimated and the mitigation it imposed was wholly insufficient. The State Water Board needs to immediately convene a public hearing process for IID's Petition that addresses the following issues:

- Salton Sea's elevation is declining rapidly. The area of exposed playa will be 340% more than assumed.
- The excess PM10 emissions will overwhelm Imperial County causing the air to be more highly contaminated and increasing the number of days the public will breathe unhealthful air.
- There are toxic chemicals in the Salton Sea sediment that can become airborne creating toxic-laden dust storms harmful to human health and agricultural crops.

The State Water Board's hearing process should also include conforming WRO 2002-0013 to the legislation and QSA-JPA as discussed above.

It is undeniable that the water transfers will create an unabated public health hazard in Imperial and Riverside Counties. If the exposed area is not restored and mitigated sufficiently by the State as promised, the entire Imperial County region will be the subject of draconian sanctions imposed by the U.S. Environmental Protection Agency that will depress the County's economy by increasing the costs for new and expanding businesses and public works projects, and imposing a freeze on federal highway funding.

The key obstacle to addressing these issues is not a shortage of restoration plans, but rather a shortage of funding. Therefore, it is also essential that while the public workshop process described in IID's petition is proceeding, the State Water Board convene a task force of representatives of the State Legislature, DFW, and the stakeholders (including the Air District and County) to identify existing funding sources for the restoration projects that the local agencies ascertain from the various restoration plans that can be implemented in the near term.

3. What changes, if any, should the State Water Board consider making to Revised Order WRO 2002-0013?

The QSA water transfers would not have occurred without the State's legal commitment to fund Salton Sea restoration and mitigation of impacts. The State made this commitment almost *two years after* the State Water Board approved WRO 2002-0013. The State Water Board should initiate a collaborative dialogue with key stakeholders, including the Air District, County) and other responsible agencies, with the objective of building consensus around restoration projects that can be immediately implemented and a plan to fund these near term projects. The results of this collaborative dialog can be presented to the State Water Board, which can and should use its continuing authority under the Water Code to require that these projects be implemented and funded.

In order to carry out the State Water Board's oversight and public trust obligations, the Air District also requests that the Board establish a procedure for periodic review of the implementation of WRO 2002-0013. The Air District suggests that the State Water Board conduct a noticed public hearing every five (5) years to comprehensively review new data and adjust restoration and mitigation requirements as needed. Such periodic reviews would allow for appropriate revisions to WRO 2002-0013 to stay current with the physical conditions at the Salton Sea and with evolving State policies defining reasonable and beneficial water use, sustainable water management objectives, and public trust resource protection. It would also ensure that institutional memory is retained and provide a forum to address new issues in an orderly, proactive manner that enables all stakeholders to stay vigilantly engaged in Salton Sea Restoration efforts. By maintaining regular oversight of WRO 2002-0013's implementation, the State Water Board would create a foundation for informed decision-making.

Detailed comments and supporting documentation are in the attachment and exhibits to this letter. The Air District looks forward to participating in this process.

Sincerely,



Ryan E. Kelley
Chairman

w/ Attachment and Exhibits

*Imperial County Air Pollution Control District's Comments Re:
Status of the Salton Sea and Revised Order WRO 2002-0013*

ATTACHMENT

1. THE AIR DISTRICT IS A RESPONSIBLE PARTY BECAUSE IT IS CHARGED BY THE STATE LEGISLATURE WITH PROTECTING PUBLIC HEALTH.

Imperial County Air Pollution Control District (“Air District”) responds to the State Water Resource Control Board’s (“State Board”) Solicitation for Comments because it is the sole statutory authority responsible for compliance with the federal Clean Air Act and State air quality requirements in Imperial County. The Air District is required under California Health and Safety Code sections 40001 and 41503.4 to develop plans (called State Implementation Plans or “SIPs”) and rules so that areas within its jurisdiction will attain and maintain federal and state ambient air quality standards. The County extends over 4,597 square miles within the southeastern portion of California, bordering Mexico to the south, Riverside County to the north, San Diego County to the west and Arizona to the east. The Salton Sea, California’s largest lake, is located in Imperial and Riverside Counties and comprises the western arm of the lower Colorado River delta system.

2. SHORT HISTORY.

A. The “Pre-QSA” Colorado River Water Allocations Were Governed by the Seven Party Agreement.

California is limited to 4.4 million acre-feet per year (“maf”) of Colorado River water, plus one-half of any surplus water. (*Arizona v. California* (1963) 373 U.S. 546, 555-586; 43 U.S.C. § 617c(a); California Limitation Act, Cal. Stats. 1929, ch. 16, § 1.) Assuming California would always receive surplus waters, the water contractors (Imperial Irrigation District (“IID”), Metropolitan Water District of Southern California (“MWD”) and Coachella Valley Water District (“CVWD”)) agreed in the “Seven Party Agreement” to apportion 5.362 maf of Colorado River water, as shown below.

Table 1: Seven Party Agreement

Priority	Description	Amount of Water (acre-feet/year)
1	Palo Verde Irrigation District (“PVID”): 104,500 acres	3,850,000
2	Yuma Project: 25,000 acres	
3(a)	IID and lands in Imperial and Coachella Valleys to be served by the All-American Canal: IID (Senior); CVWD (Junior)	
3(b)	PVID: 16,000 acres of mesa lands	
4	MWD and/or City of Los Angeles and/or others on coastal plain	550,000
	SUBTOTAL (California’s Basic Apportionment)	4.4 maf

Priority	Description	Amount of Water (acre-feet/year)
	If surplus waters available	
5(a)	MWD and/or the City of Los Angeles and/or others on coastal plain	550,000
5(b)	MWD	112,000
6(a)	IID and lands in Imperial and Coachella Valleys: IID (Senior)/ CVWD (Junior)	300,000
6(b)	PVID: 16,000 of mesa lands	
7	Agricultural Use	Remainder
		5.362 mafy

The Seven Party Agreement dictated how the Secretary of Interior (“Secretary”) delivered Colorado River water before the Quantification Settlement Agreement, or “pre-QSA.” IID holds the lion’s share of California’s water rights and does not rely upon surplus Colorado River water. CVWD’s junior priority position in 3(a) means that any shortages in fulfilling the first three priorities are borne by CVWD. MWD was allotted 550,000 acre-feet per year (“afy”) under a fourth priority right, and 662,000 afy under a fifth priority right not within California’s 4.4 mafy allocation. As an MWD-member agency, San Diego County Water Authority (“SDCWA”) must compete with other MWD members to obtain sufficient water supplies.

MWD historically received full allotments because surplus water conditions existed on the Colorado River (66 Fed. Reg. 7772, 7774 (Jan. 25, 2001)), and Arizona and Nevada were not using their full apportionments. (65 Fed. Reg. 48,531, 48,533 (Aug. 8, 2000); 5-ER:91/AR3:CD10:101804_0115-0120.) When the Central Arizona water project was approved and Nevada needed water to grow, the Secretary demanded California live within its 4.4 mafy apportionment. Once California is limited to 4.4 mafy, MWD’s Colorado River Aqueduct (built expecting permanent surplus waters) would operate half empty.

Colorado River surplus conditions were declared for 15 years (2001-2016). But, for MWD to be eligible for surplus waters, then-Secretary Norton required the QSA to be executed by December 31, 2002. The QSA was intended to fundamentally change the Seven Party Agreement.

B. Rising Salton Sea Water Levels Led to the QSA.

The genesis of the QSA water transfers were the State Water Board’s 1984 Decision-1600 and Water Rights Orders 84-12 and 88-20, which sustained complaints from a landowner impacted by rising Salton Sea water levels allegedly caused by IID’s irrigation practices. Landowners adjacent to the Salton Sea eventually sued IID and CVWD over the flooding. (*Salton Bay Marina, Inc. v. IID* (1985) 172 Cal.App.3d 914; *U.S. v. IID* (1992) 799 F.Supp. 1052.) The State Water Board concluded that IID should conserve water to avoid flooding at the Sea. In response, IID agreed in 1988 to conserve and transfer 100,000 afy of water to MWD. The State Water Board determined the IID-MWD agreement fulfilled IID’s obligations under Order 88-20.

C. IID and SDCWA Negotiated a Second Water Transfer.

Because its water usage was still under attack, IID negotiated another water transfer to SDCWA. The negotiations culminated in April 1998, with an agreement for IID to transfer up to 300,000 afy of Colorado River water directly to SDCWA. In July 1998, IID and SDCWA submitted a joint petition to the State Water Board for approval of the IID-SDCWA water transfer agreement. CVWD and MWD protested, arguing that under the federal Law of the River and priority system Colorado River water should flow to them as junior appropriators and not to SDCWA. To settle the disputes, the four water agencies negotiated key terms for the QSA and entered into a Protest Dismissal Agreement that reduced the transfer to SDCWA to 200,000 afy, re-directed 100,000 afy to CVWD and/or MWD, and capped IID's water allocation at 3.1 mafy.

D. Salton Sea Impacts Was a Critical and Controversial Issue that Jeopardized the QSA's Execution by the Secretary's December 2002 Deadline.

Impacts to the Salton Sea emerged as a key issue during the State Water Board hearings on the joint IID-SDCWA petition between April and July 2002.¹ Testimony was presented at the hearings about the insufficiency of the EIR/EIS and the water transfers' impacts on the Sea.

E. The State Water Board Issued WRO 2002-0013 Granting a 75-Year Approval.

On June 28, 2002, IID certified the final Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for the water transfers under the California Environmental Quality Act ("CEQA"). IID was unable to approve a project with the EIR/EIS because there was no agreed-to QSA. After the EIR/EIS was certified, Salton Sea impacts continued to be the subject of negotiations led by former Assembly Speaker Robert Hertzberg. In October 2002, a new QSA was announced. Mitigation water would be sent to the Salton Sea for 15 years (until 2017). IID and SDCWA also capped their environmental mitigation expenses. The changes from the Hertzberg negotiations were the subject of IID's first addendum to the final EIR/EIS approved in December 2002. The addendum was never submitted to State Water Board.

After the new QSA deal was announced, the State Water Board issued WRO 2002-0013 on October 28, 2002, conditionally approving the IID-SDCWA petition. The State Water Board was the first agency to approve the water transfers in reliance on the final EIR/EIS and establish the mitigation requirements. WRO 2002-0013 allowed IID to transfer up to 200,000 afy of Colorado River water to SDCWA and up to 100,000 afy to CVWD and/or MWD, contingent upon the lead agency, IID, executing the QSA and approving the transfers. The term of the transfers was 45-years with an optional 30-year renewal period, for a total of 75-years.

The Air District and others filed petitions for reconsideration of WRO 2002-0013. Parties to the State Water Board proceeding also requested the proceedings be suspended until IID could consider a final QSA project. On December 20, 2002, the State Water Board issued WRO 2002-0016, denying the requests for reconsideration and suspension of the proceedings, and issued Final WRO 2002-0013. WRO 2002-0013 is the subject of the current public workshop.

¹ The Air District incorporates by reference the administrative record prepared by the State Water Board for WRO 2002-0013.

F. The Water Agencies Did Not Agree on a QSA Before the Secretary's December 31, 2002 Deadline Expired.

In December 2002, there were still significant unresolved issues associated with the QSA. Under the Hertzberg-version of the QSA, the cost of Salton Sea restoration and environmental mitigation costs exceeded the amount the four water agencies were willing to pay. Because the QSA deal was falling apart, the Secretary issued an ultimatum to IID: if the QSA was not executed by December 31, 2002, surplus water deliveries would be suspended reducing California's water by 620,000 afy. If the QSA was executed by the deadline, then surplus waters would be available to MWD.

Different versions of the QSA were approved by IID, MWD, SDCWA and CVWD. When the Secretary's December 31, 2002, deadline to execute the QSA passed without any agreement, the Secretary reduced IID's 2003 water delivery order under 43 C.F.R. Part 417. IID sued. The federal court eventually enjoined the Department of Interior from reducing IID's 2003 water delivery order. The federal government responded in April 2003 by instead reducing MWD's and CVWD's water delivery orders.

G. The State Water Board and Legislative Representatives Negotiated the Approved QSA.

After the December 31, 2002, deadline passed without a signed QSA, Richard Katz, Senior Advisor to the Governor and State Water Board member and Senator Machado, led new negotiations to create a modified QSA that addressed Salton Sea issues and mitigation funding. The public, County, and Air District were not included in the negotiations.

Under the Katz-version of the QSA, the State agreed to fund restoration of the Salton Sea and pay all mitigation costs exceeding IID/CVWD/SDCWA's contributions. MWD does not fund the mitigation. The State Legislature confirmed its commitment to fund restoration and mitigation costs when it enacted the Salton Sea Restoration Act ("Restoration Act"), Fish and Game Code Section 2930 et seq. (See Exhibit 1 [Chapters 611-613, Statutes of 2003; Chapter 613, Statutes of 2003, Section 1 (f)-(g)].)

Relying on the State's commitment, the parties executed the QSA and its related agreements. On October 2, 2003, IID re-approved and re-certified the final EIR/EIS and QSA, as modified and supplemented by a second addendum. The final QSA was not brought back to the State Water Board so that it could fully conform WRO 2002-0013 to the QSA.

H. The QSA Fundamentally Changed the Seven Party Agreement.

Under the QSA, IID's Priority 3(a) water under the QSA was no longer the undefined portion in the Seven Party Agreement, but instead distributed by the Secretary according to the QSA as shown in Table 2.²

² Citations in Table 2 are to Exhibit B to the Colorado River Water Delivery Agreement ("CRWDA"), which identifies the Secretary's water distribution for each of the 75 years. Table 2 shows the distribution for 2017 and 2026 as year 2017 is the last year for Salton Sea mitigation

Table 2: Priority 3(a) Colorado River Water Distribution for IID

	Changes in Quantified Amount (in kafy)		QSA-Approved Quantification and Recipient(s) of IID's Water
	2017	2026	
Quantification	3,100	3,100	Quantification of IID's Priority 3a (<u>Exhibit 2</u> [Column 3])
Individual Reductions From IID's Quantified Amount	-110	-110	MWD (<u>Exhibit 2</u> [Column 4])
	-100	-200	SDCWA (<u>Exhibit 2</u> [Column 5])
	-67.7	-67.7	56.2 to SDCWA; 11.5 to SLR parties <u>Exhibit 2</u> [Column 6])
	-150	0	Salton Sea mitigation water (<u>Exhibit 2</u> [Column 7])
	-45	-103	CVWD or MWD (<u>Exhibit 2</u> [Column 8])
	-91	0	MWD (<u>Exhibit 2</u> [Column 9])
	-11.5	-11.5	Misc PPRs (<u>Exhibit 2</u> [Column 11])
Total Reduction	-575.2	-492.2	IID's Net Quantified Amount (<u>Exhibit 2</u> [Column 12])
Net Amount	2,524.8	2,607.8	Amount Secretary Delivers to IID after CRWDA (<u>Exhibit 2</u> [Column 13])

Under the QSA, water previously diverted at the Imperial Dam and transported by the All-American Canal to Imperial Valley would now be diverted upriver at Lake Havasu/Parker Dam and transported by MWD's aqueduct for SDCWA's service areas. Less Colorado River water is delivered to IID under the QSA, significantly reducing inflow to the Salton Sea.

I. The State Water Board Modified Paragraphs 5 and 6 of WRO 2002-0013.

In October 2003, IID requested that the State Water Board revise paragraphs 5 and 6 of WRO 2002-0013, which reference the Salton Sea Habitat Conservation Strategy ("SSHCS"), by accepting a replacement mitigation plan (a new 15-year water schedule) for reduced inflows to the Salton Sea. (Exhibit 3.) The State Water Board staff approved IID's alternate mitigation strategy in January 2004 without conducting a proper analysis to ensure the new mitigation reduced the impacts to the same extent as the original condition. (Exhibit 4.) Under the SSHCS, mitigation

water and year 2026 shows the effect of the QSA through 2077.

water would have been sent to the Salton Sea to maintain the Sea’s salinity at 60 ppt until 2030, and the Sea’s elevation would be maintained and not decline until 2035. The 15-year water delivery schedule provided for 800,000 acre feet of mitigation water to be delivered to the Salton Sea. This did not fully offset IID’s water diversions under the QSA of 5,339,000 during this same period. This likely explains why the Salton Sea has declined much faster than the State Water Board originally projected.

J. Lawsuits Challenging the QSA and EIR/EIS Have Been Settled.

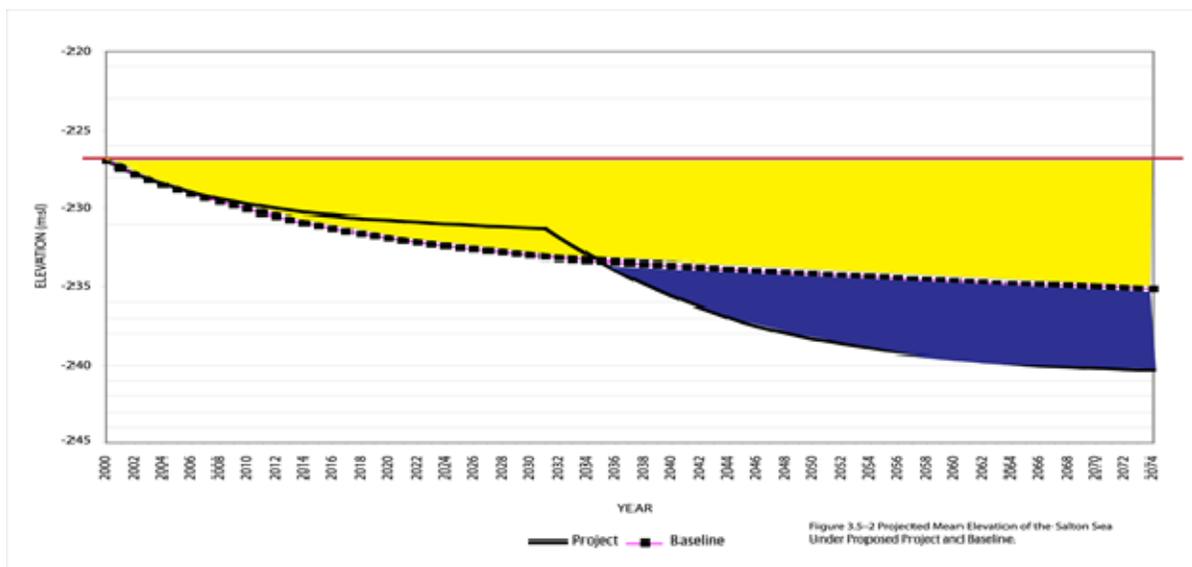
The QSA contracts and related CEQA documents were challenged. IID, the County and Air District recently settled the case and are now united in their request that the State Water Board, which issued the necessary permit to allow the water transfers and is ultimately responsible for ensuring adequate mitigation, modify WRO 2002-0013 to conform it to the final QSA, in particular the State’s funding obligations for restoration and mitigation.

3. THE STATE WATER BOARD MUST ACT NOW TO PREVENT A PUBLIC HEALTH CATASTROPHE AT THE SALTON SEA.

The water transfers are causing an unabated public health hazard in Imperial and Riverside Counties. If the State does not sufficiently address the impacts, the United States Environmental Protection Agency (“EPA”) can impose draconian sanctions on the County.

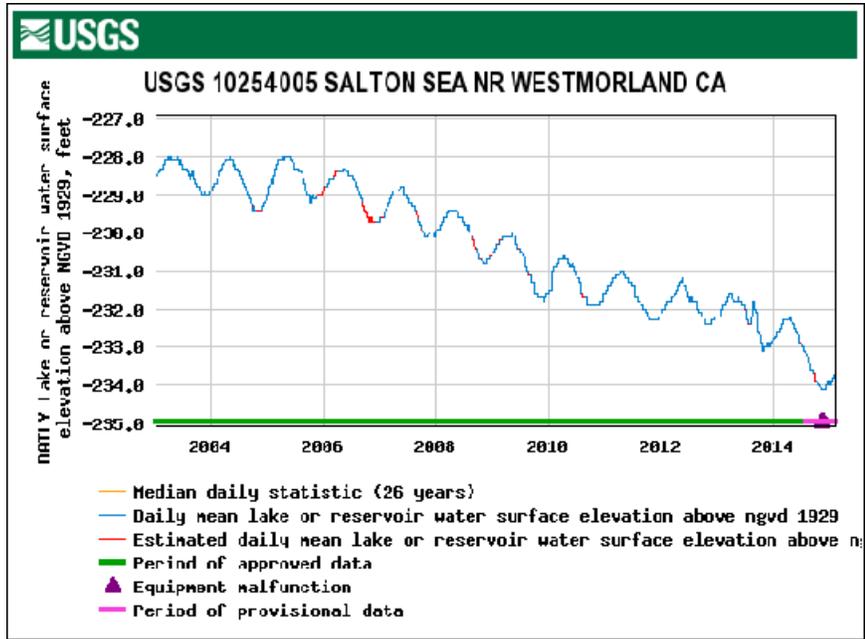
A. The Sea’s Elevation is Declining, Not Stable as the Conditions Promised.

WRO 2002-0013 projected the mean water surface elevation of the Salton Sea with the water transfers. In 2015, the elevation of the Salton Sea with the water transfers was projected to be around -230 mean sea level (“msl”). Under the State Water Board’s assumptions, the shoreline would not start receding until 2035. (Exhibit 5 [EIR/EIS, at 3-39, 3-50].)



(WRO 2002-0013 p. 43, Figure 3.3-7 [colors and red line added].)

The assumptions the State Water Board relied upon are undeniably in error. In actuality, according to the United States Geological Survey’s (“USGS”) data, the Salton Sea has been receding and its elevation is currently about -234 msl:



These conditions will only get vastly worse. Once the obligation to send mitigation water to the Salton Sea ends in 2017, the rate of the Sea’s elevation decline is expected to double. The recession of the Sea at a faster rate than originally assumed in WRO 2002-0013 constitutes an important new circumstance that the State Water Board needs to address.

B. New Data Shows that 55,000 Acres of Playa will be Exposed Between 2011 and 2047.

When WRO 2002-0013 was approved, the State Water Board projected that by 2077, the transfers would expose 16,000 acres of playa at the Salton Sea. (Exhibit 6 [EIR/EIS, at 3-53].) The State Water Board’s projections significantly underestimated the amount of playa that will be exposed by the QSA water transfers. Recent modeling analysis shows that from 2011 to 2078 approximately 55,000 acres of playa are exposed as a result of the QSA water transfers. This is almost three times the amount of playa exposed at Owens Lake. The significant increase in the amount of exposed playa will undeniably cause more air pollution than the State Water Board originally projected. This is a serious public health issue that the State Water Board must address.

C. The QSA’s Contribution to Air Pollution Must be Quantified and Re-Elevated to Protect Public Health.

The Air District has the primary responsibility for control of air pollution from all sources other than vehicular sources. (Health & Safety Code, §§ 39002 et seq., 40000 et seq., 40910 et seq., 42 U.S.C. §§ 7401-7402, 7407, 7410(a)(1).) Exposed playa at the Salton Sea causes

“fugitive emissions.” Fugitive emissions are those that cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (Health & Safety Code, § 39023.3.)

WRO 2002-0013 stated:

The air quality impacts of exposed shoreline associated with the proposed project are difficult to predict using existing studies and technology.

(WRO 2002-0013, p. 71.)

It is possible to estimate the emissions potential of the playa at the receding Salton Sea. The Air District has estimated the emissions utilizing the information from IID’s Salton Sea hydrology model, a report prepared by ENVIRON International Corporation in October 2005, “Technical Memorandum Regulation VIII BACM Analysis”, and the methodology utilized in the 2009 SIP approved by EPA.³ Based on this information, the Air District estimates that the QSA-caused exposed playa at the Salton Sea has the potential to create **70.6 tons a day and 25,769 tons a year of PM10.**⁴

The 2005 emission inventory that formed the basis for the Air District’s strategy to attain healthful air in the 2009 SIP did not include the additional PM2.5 and PM10 emissions caused by the QSA.

Table 3: PM10 Emission Inventory for Imperial County in Baseline Year 2005 (tpd)

Source Category	Annual Average	Winter Average	Summer Average
Fuel Combustion	0.41	0.35	0.48
Waste Disposal	0.00	0.00	0.00
Cleaning Surface Coatings	0.00	0.00	0.00
Petroleum Production Marketing	0.00	0.00	0.00
Industrial Processes:	2.79	2.79	2.78
Mineral Processes	2.63	2.62	2.64
Food/Agriculture	0.16	0.17	0.14
Solvent Evaporation	0.00	0.00	
Res Fuel Combustion	0.09	0.16	0.02

³ The emissions estimates and projected pollutant concentrations will continue to be refined by the Air District as part of its development of a SIP.

⁴ The methodology is: $(1.3 \times 10^{-3}) \times (55 \times 10^{-3}) - 0.9 = 70.6$ tons per day of PM10 emissions.

Source Category	Annual Average	Winter Average	Summer Average
Farming	9.88	11.55	8.20
Tilling	7.10	8.77	5.42
Harvest	0.01	0.01	0.01
Cattle	2.77	2.77	2.77
Construction	2.20	2.01	2.38
Paved Road Dust	3.38	3.30	3.46
Entrained Unpaved Road Dust	56.85	33.71	79.98
City/County	24.58	14.58	34.59
Canal	29.57	17.54	41.61
BLM/USFS	1.34	0.79	1.88
Farm	1.35	0.80	1.90
Windblown Dust	212.67	223.79	201.95
Open Areas-Urban	0.01	0.02	0.00
Open Areas-Others	169.54	191.09	148.34
Unpaved Roads:	30.52	18.10	42.94
City/County	7.82	4.64	11.00
Canal	16.32	9.68	22.96
BLM/USFS	0.37	0.22	0.52
Farm	6.01	3.56	8.46
Non-Pasture Ag Lands	10.81	13.21	8.46
Pasture	1.79	1.37	2.20
Fires	0.00	0.00	0.00
Waste Burning	2.77	2.77	2.77
Cooking	0.06	0.06	0.06
On-Road Mobile	1.05	1.06	1.05
Other Mobile	0.99	0.95	1.04
Total	293	282	304

The estimated emissions from the QSA could add another 70 tons a day of PM10 emissions to the emission inventory, increasing by three and half times the emissions collectively of all open areas in the County. The Salton Sea will become the single largest PM10 source in Imperial County, likely surpassing Owens Lake as the largest PM10 source in the nation. (Exhibit 7 [Poiriez Declaration, ¶ 20].)

D. The QSA Water Transfers have Contributed to an Increase in the Number of Days the Air Exceeds the Standards of Safety and Will Affect Imperial County's Ability to Attain Healthful Air Quality.

EPA established National Ambient Air Quality Standards (“NAAQS”) and the California Air Resources Board (“CARB”) established California Ambient Air Quality Standards (“CAAQS”) for PM10 and PM2.5, a pollutant in fugitive dust. (40 C.F.R. Part 50.6; 17 Cal. Code Regs. § 70200.) The ambient air quality standards are established at levels necessary to protect public health. EPA established a 24-hour NAAQS for PM10 because PM10 poses a health concern as it can be inhaled into and accumulate in the respiratory system. (Exhibit 8 [Munday Declaration, ¶ 6].) The 24-hour NAAQS for PM10 is 150 µg/m³.

Since the State Water Board’s approval of WRO 2002-0013, EPA has twice changed the NAAQS for particular matter, once in 2006 and in 2012. The 24-hour PM2.5 NAAQS was changed from 65 µg/m³ when WRO 2002-0013 was approved to 35 µg/m³, and the annual PM2.5 NAAQS was changed from 15.0 µg/m³ to 12.0 µg/m³.

The State has established a stricter 24-hour ambient air quality standard for PM10 of 50 µg/m³ and an annual average standard of 20 µg/m³. The State established an annual average standard for PM2.5 of 12 µg/m³. CARB and the Office of Environmental Health Hazard Assessment conducted an evaluation of the health-based standards as required by The Children’s Environmental Health Protection Act (Senate Bill 25, Escutia, 1999). These agencies concluded that significant harmful health effects may occur among both children and adults when outdoor PM10 concentrations are at or near the State standards.

The geography of Imperial Valley poses challenges to attaining healthful air quality. Imperial Valley is below sea level, including all of its major population centers and the Salton Sea. (Exhibit 7 [Poiriez Declaration, ¶ 9].) Due to this fact, dust and other airborne pollutants have a tendency to hover in the air and do not move out of the valley. (*Id.*)

WRO 2002-0013 stated:

Parties presented considerable testimony concerning the possibility that emissive sediments will be exposed as inflows to the Sea are reduced and the water level in the Sea declines. Once again, the testimony was inconclusive. With implementation of the SSHCS, we do not expect the project to cause air quality impacts during the first 15 years of this project.

(WRO 2002-0013, p. 71.)

Evidence now shows that the QSA water transfers are linked to new and more severe air quality impacts.

The Salton Sea ambient air monitoring network installed and operated by IID to assess the QSA’s impacts to air quality at the Salton Sea confirms the exposed playa is a significant new source of PM10 emissions contributing to exceedances of the NAAQS and CAAQS, and affects the attainment status for the entire County.

Table 4: PM10 Exceedances at the Salton Sea

Year	NAAQS Exceedances (150 µg/m³)	CAAQS Exceedances* (50 µg/m³)	Total
2010	0	34	34
2011	3	39	42
2012	4	65	69
2013	7	72	79
2014	7	80	87
2015**	0	1	1
Total	21	291	312

*State exceedance figures do not include federal exceedances

**Year-to-date as of February 13, 2015

Date Source: CARB Air Quality and Meteorological Information System

Imperial County could face remedial and proprietary consequences if the QSA-caused emissions are not addressed. More than one exceedance of the NAAQS can cause an area to be declared in nonattainment. (40 C.F.R. § 50, App.K, 2.1(a).) An EPA finding that the Air District’s SIP does not meet Clean Air Act requirements because the SIP is overwhelmed by PM10 emissions from the QSA will undoubtedly trigger the 18-month clock for mandatory application of sanctions that will significantly increase the amount (and cost) of pollution credits that new and expanding businesses and public works projects must purchase (i.e., offset requirements), and impose a freeze on federal highway funds. (42 U.S.C. §§ 7410(m), 7509(b)(1), (b)(2); *Citizens for a Better Env’t v. v. Deukmejian* (1990) 731 F.Supp. at 1455, fn. 9; *Davis v. E.P.A.* (2003) 348 F.3d 772, 778.)

The impacts will not be limited to Imperial and Riverside Counties. For example, on September 10, 2012, the South Coast Air Quality Management District (“SCAQMD”), which has jurisdiction over the northern part of the Salton Sea, received about 235 complaints of a “rotten-egg” odor spreading from near the Salton Sea to the San Fernando Valley, over 150 miles. Attached as Exhibit 9 is SCAQMD’s press release reporting its findings based on its air monitoring samples and analysis of air samples that the Salton Sea was the source of the “big stink”. The Air District expects that continuation of the QSA without adequate mitigation coupled with strong winds will again assist the seabed in turning and carrying the odors far distances. These same strong winds that cause this odor effect can also cause high PM10 levels that may contain toxic pollutants to travel long distances, even into the highly populated areas of Los Angeles County.

E. The Impacts of Airborne Toxics on Public Health and the County's Agriculture Industry have Not Been Assessed.

There is no debate that toxic chemicals exist in the upper foot of the Salton Sea sediment. (Exhibits 10, 11 [toxics studies].) Levels of arsenic, cadmium, copper, lead, molybdenum, nickel, selenium and zinc have been found in the Salton Sea sediment. (Exhibit 12 [Schade Declaration, ¶ 26].) When the playa is exposed these toxics can become airborne creating toxic-laden dust storms harmful to the public and agricultural crops. There are populated areas and farmland less than five miles from the Sea's shoreline.

According to EPA, people exposed to toxic air pollutants at sufficient concentrations and durations may have an increased chance of getting cancer or experiencing other serious health effects. These health effects can include damage to the immune system, as well as neurological, reproductive (e.g., reduced fertility), developmental, respiratory and other health problems. (Exhibit 13 [Ospital Declaration, ¶ 11].) In addition to exposure from breathing air toxics, some toxic air pollutants such as mercury can deposit onto soils or surface waters, where they are taken up by plants and ingested by animals and are eventually magnified up through the food chain. Like humans, animals may experience health problems if exposed to sufficient quantities of air toxics over time.

F. Increased Particulate Emissions are a Public Health and Economic Concern.

Air pollution is creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California. (Cal. Health & Safety Code § 39000.) According to CARB:

PM10 is among the most harmful of all air pollutants. When inhaled these particles evade the respiratory system's natural defenses and lodge deep in the lungs.

Health problems begin as the body reacts to these foreign particles. PM10 can increase the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections.

Although particulate matter can cause health problems for everyone, certain people are especially vulnerable to PM10's adverse health effects. These "sensitive populations" include children, the elderly, exercising adults, and those suffering from asthma or bronchitis.

Of greatest concern are recent studies that link PM10 exposure to the premature death of people who already have heart and lung disease, especially the elderly.

Exposure to elevated concentrations of PM10 is associated with increased hospital and doctor visits for bronchitis, asthma, cardiac and respiratory tract disease. (Exhibit 7 [Poiriez Declaration, ¶ 24]; Exhibit 13 [Ospital Declaration, ¶ 12].) Children and the elderly are more vulnerable to the adverse effects of air pollution than are healthy adults. PM10 exposure is also associated with increased risk of premature deaths, especially in the elderly and people with pre-existing cardiopulmonary disease. (*Id.*) Imperial County leads the State in childhood asthma

hospitalizations of children aged 0-14 by more than twice the state average (California Department of Health Services, 2000). (Exhibit 8 [Munday Declaration, ¶ 6].)

In addition, health care costs and lost work days associated with elevated PM10 levels cause negative fiscal impacts to Imperial County’s health care system and business productivity. Agriculture is the single most important economic activity in the County with a value exceeding one billion dollars annually. The acidic portion of particulate matter (nitrates, sulfates) can harm crops by reducing crop yields. (Exhibit 14 [Kalin Declaration, ¶¶ 14, 15].) This will cause economic losses to the County, its agricultural industry, and other industries and businesses that rely on the agricultural industry.

As of 2014, the cost of inaction at the Sea is projected to be \$70 billion through 2047, before the QSA renewal term is set to begin according to the Pacific Institute’s report, *Hazard’s Toll: The Cost of Inaction at the Salton Sea* (“Hazard Report II”) (Exhibit 15.) Hazard Report II follows the Pacific Institute’s initial report in 2006⁵ (“Hazard Report I”) (Exhibit 16) that addressed the consequences of not implementing a restoration project. Hazard Report I predicted that salinity levels at the Salton Sea would triple by 2017 and that, after 2017, the rate of the Salton Sea’s decline would accelerate dramatically, shrinking the Sea’s volume by more than 60% between 2018 and 2030. (Exhibit 16 [Hazards Report I, pp. 9, 13].)

Hazard Report II confirms the dire predictions of its earlier study. The report measured the costs associated with no Salton Sea restoration by assigning values⁶ to the following five categories:

Category	Present Day Value (by 2047)
Public Health	\$21-37 Billion
Property	\$7 Billion
Agricultural Productivity	Insufficient information
Recreational Revenues	\$110 - \$150 Million
Ecological Values	\$10-\$26 Billion

These costs are significantly higher than the State’s preferred restoration plan.

4. THE STATE HAS AN OBLIGATION TO ADDRESS IMPACTS AT THE SALTON SEA.

One week after the Katz-version of the QSA was negotiated the Legislature amended three bills (SB 277 – Ducheny; SB 317 – Keuhl; and, SB 654 – Machado) to implement the QSA.

⁵ *Hazard: The Future of the Salton Sea With No Restoration Project*, Pacific Institute, May 2006.

⁶ For comparative purposes, Mr. Cohen adjusts all Salton Sea Restoration costs to 2013 values, including those contained in the Preferred Alternative Report and QSA Joint Powers Authority (“QSA-JPA”) (Exhibit 17).

(Exhibit 1.) In addition to mitigation, the Legislature allocated responsibility for restoration of the Salton Sea to the State of California. Based on mitigation efforts at Owens Lake, the failure to act at the Salton Sea will cost billions of dollars.

The State’s obligation is set forth in Section 9.2 of QSA-JPA:

The State is solely responsible for the payment of the costs of and liability for Environmental Mitigation Requirements in excess of the Environmental Mitigation Cost Limitation. The amount of such costs and liabilities shall be determined by the affirmative vote of three Commissioners, including the Commissioner representing the State, which determination shall be reasonably made. The State obligation is an unconditional contractual obligation of the State of California, and such obligation is not conditioned upon an appropriation by the Legislature, nor shall the event of non-appropriation be a defense.

The California State Auditor recommends that the State fulfill its Restoration promise in part to reduce its environmental mitigation liability. (Exhibit 18 [Auditor’s Report 2013-101, pp. 2, 17, 18, 35].)

5. **THE STATE WATER BOARD HAS THE LEGAL AUTHORITY TO ACT ON IID’S REQUEST TO REQUIRE RESTORATION AND ENSURE ADEQUATE MITIGATION OF THE SALTON SEA.**

In 2002, the State Water Board approved the QSA water transfers to San Diego and other parties to the QSA contracts in accordance with Water Code section 1736 based, in part, on conditions intended to protect the Salton Sea. (*See* WRO 2002-0013, Condition Nos. 5 and 6.) By the express terms of the QSA, the delivery of this mitigation water will cease in 2017, at which point the Salton Sea will be without the mitigation water earmarked for the Salton Sea’s protection under the terms of WRO 2002-0013. Absent the State’s action, the Salton Sea and Imperial Valley will suffer “substantial injury” after 2017 when the delivery of this mitigation water ceases, resulting in the accelerated decline and deterioration of the Salton Sea shoreline and habitat.

A. **IID’s Petition is Entitled to Deference by the State Water Board.**

IID’s Petition defines the terms on which it chooses to voluntarily change its own water right permit. IID, as the holder of Water Right Permit No. 7643 at issue, is entitled to make any change it chooses to “the point of diversion, place of use, or purpose of use” from that authorized in its permit upon its own application to the State Water Board. (Water Code, §§ 1701; *see also State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 740-741 [“in the absence of injurious consequences to others, any change which the party chooses to make is legal and proper (citation omitted) It is ... settled law that the person entitled to the use of water may change the place of diversion, or the place where it is used, or the use to which it was first applied, if others are not injured by such change” (citing *Ramelli v. Irish* (1892) 96 Cal. 214, 217)].)

Additionally, as the local agency water district, IID is entitled to deference by the State Water Board in its determination that the requested condition is required to make the transfer consistent with the public welfare of the place of export, the Imperial Valley. (Water Code §§

109, 380.) Likewise, in its role as one of the California users of Colorado River Water, IID is entitled to control the allocation of water it receives, subject to existing laws and contractual obligations. (*California ex rel. Imperial County Air Pollution Control Dist. v. U.S. Dept. of the Interior* (9th Cir. 2014) 77 F.3d 781, 799.)

The State Water Board's role in reviewing IID's Petition is governed by the "no injury rule" (Water Code § 1736), just as the State Water Board's original exercise of jurisdiction. As long as the State Water Board determines that IID's requests "would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses," IID is entitled to the State Water Board's approval of the terms of transfer that IID proposes.

The law does not allow the State Water Board simply defer making the required findings under section 1736 or to delegate to another agency its responsibility for determining that the approval of the condition requested by IID would not operate to the injury of any legal user of the water involved, particularly where such a failure to act would negatively impact the coordinated efforts and goals of other agencies concerning the same resource.

B. The State Water Board's Action to Consider and Grant IID's Petition Would Implement the California Water Plan.

The January 30, 2015 California Water Action Plan and IID's Petition are not mutually exclusive. The California Water Action Plan calls for addressing challenges to the State's water management systems by supporting three overarching goals: reliability, restoration and resilience. To that end, the California Water Action Plan discusses funding for Salton Sea habitat improvement. (Exhibit 19 [Cal. Water Action Plan Implementation Report 2014-2018, Jan. 30, 2015, Action No. 4, pp. 8, 15].) By failing to address Salton Sea restoration in a meaningful way, WRO 2002-0013 violates the California Water Action Plan and jeopardizes the sustainability of the QSA. The Department of Water Resources' ("DWR") California Water Plan, which designated the Natural Resources Agency and Salton Sea Authority as the "torch-bearers" for Salton Sea restoration, is also responsive to WRO 2002-0013 and acts as a mechanism to facilitate Salton Sea restoration in light of the impacts caused by the QSA water transfers. (Exhibit 20 [Cal. Water Plan, Jan. 2013 Update, Vol. 2, Regional Reports [Colorado River Hydrologic Region], CR-24 – CR-25].) The California Water Plan specifically identifies the improvement of "environmental conditions that would otherwise deteriorate with water scarcity" as a "potential benefit" of transferred water. (Exhibit 21 [Cal. Water Plan, Jan. 2013 Update, Vol. 3, Resource Management Strategies, Ch. 8 [Water Transfers], p. 8-9, Ch. 22 [Ecosystem Restoration]].)

In keeping with the economic sustainability goals of the California Water Action Plan, the Restoration Plan must include the preservation of geothermal, economic, and environmental values at the Salton Sea. The terms proposed by IID's Petition would establish sustainable water management objectives to guide program development that in turn drives budget decisions, consistent with the California Water Action Plan. By approving IID's Petition, the State Water Board would promote a process that ultimately secures the Proposition 1 funds for Salton Sea habitat restoration discussed in the California Water Action Plan, and provides practical guidance to the State Legislature to establish State funding levels for the restoration plan to fulfill the State's commitment upon which the Order was issued.

The relief requested by IID's Petition – a directive ordering the QSA parties, the County, Air District, and Salton Sea Authority to work together on identifying restoration projects that can be implemented in the short term and developing a restoration plan and a strategy for funding implementation of the plan – is wholly consistent with the goals and intent of both the California Water Action Plan and the DWR California Water Plan.

C. The State Water Board's Action to Consider and Grant IID's Petition Is Authorized Under Its Reserved Authority.

Under Condition 7 of WRO 2002-0013, the State Water Board expressly reserved continuing authority to add, delete or modify the mitigation measures approved in Conditions 5 and 6 based upon the conclusions of a future feasibility analyzing a proposed Salton Sea restoration plan – which is the preferred means of mitigating air quality impacts. The State Water Board's action on IID's Petition would foster action by the parties to ensure implementation of an agreed-upon restoration plan, and implementation of early action restoration projects that would reduce air quality impacts. Under the State Water Board's reserved authority provisions of WRO 2002-0013, the relief sought by IID is within the State Water Board's power to grant.

D. The State Water Board's Action on IID's Petition Is Authorized Under Its Obligation to Protect Public Trust Resources.

The State Water Board not only has the authority to consider and grant the Petition, but also the obligation to do so as part of its public trust duties as a guardian of California's public trust resources. Traditionally, the public trust doctrine has been concerned with the protection of the public's right to use navigable waters for navigation, commerce, and fishing; however, the doctrine has been expanded by the California courts to include protection of natural resources associated with navigable waters and their non-navigable tributaries. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-261; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434-435, 437.) More recently (after the Board issued WRO 2002-0013 in 2002), the doctrine has been interpreted to protect birds and other wildlife distinct from navigable water bodies. (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal.App.4th 1349, 1362.) The protection of air quality is among the various public trust obligations recognized by the State Water Board and California courts. (*National Audubon Society*, 33 Cal.3d at 434-435.)

The QSA water transfer approved pursuant to WRO 2002-0013 has and will result in serious impacts to wildlife at the Salton Sea caused by the accelerated drying and exposure of the shoreline. A failure by the State Water Board to take action to approve IID's Petition would amount to a failure to discharge its public trust duties. The State Water Board has an affirmative obligation to protect the public trust resources of the Salton Sea and Imperial Valley. To the extent the State Water Board considers the long-term viability of the Salton Sea a *fait accompli*, this is not a legitimate basis for abandoning or neglecting the rights of the public with respect to resources subject to the public trust. At a minimum, the State Water Board has an affirmative responsibility to slow the accelerated decline of the Salton Sea as necessary to allow wildlife to transition and adjust with the declining habitat, and reduce the concentration of windblown dust from accelerated shoreline exposure degrading the air quality of the Imperial Valley.

IID's Petition is wholly consistent with the State Water Board's public trust duties to the State of California and the Imperial Valley community.

***Imperial County Air Pollution Control District's Comments Re:
Status of the Salton Sea and Revised Order WRO 2002-0013***

EXHIBITS

Exhibit	Date	Description
<u>1.</u>	9/29/2003	Chapters 611-613, Statutes of 2003; Chapter 613, Statutes of 2003, Section 1 (f)-(g) / SB 277 – Ducheny; SB 317 – Keuhl; and, SB 654 – Machado
<u>2.</u>	10/10/2003	Colorado River Water Delivery Agreement
<u>3.</u>	10/23/2003	Imperial Irrigation District (“IID”) Letter to State Water Resources Control Board (“State Water Board”) Re: Replacement Mitigation Plan, Order WRO 2002-0013 Conditions 5 and 6
<u>4.</u>	1/7/2004	State Water Board Letter to IID Approving Replacement Mitigation Plan, Order WRO 2002-0013 Conditions 5 and 6
<u>5.</u>	6/2002	IID Water Conservation and Transfer Project Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”), pp. 3-39, 3-50
<u>6.</u>	6/2002	EIR/EIS, p. 3-53
<u>7.</u>	3/29/2010	Declaration of Brad Poiriez, Air Pollution Control Officer, Imperial County Air Pollution Control District
<u>8.</u>	3/26/2010	Declaration of Stephen W. Munday, M.D., M.P.H., M.S., Public Health Officer, County of Imperial
<u>9.</u>	2013	Press Release – “SCAQMD Installs Hydrogen Sulfide Monitoring Network Near Salton Sea”
<u>10.</u>	11/4/2003	Characterization of Shallow Sub-Surface Sediments of the Salton Sea, Agrarian Research
<u>11.</u>	3/3/1999	Synthesis Document of Current Information on the Sediment Physical Characteristics and Contaminants at the Salton Sea, Levine Fricke
<u>12.</u>	3/24/2010	Declaration of Theodore D. Schade, Air Pollution Control Officer, Great Basin Unified Air Pollution Control District
<u>13.</u>	3/30/2010	Declaration of Jean Hospital, Health Effects Officer, South Coast Air Quality Management District
<u>14.</u>	3/23/2010	Declaration of Al Kalin, Imperial County landowner (land adjacent to Salton Sea)

Exhibit	Date	Description
<u>15.</u>	9/2014	Hazard's Toll: The Cost of Inaction at the Salton Sea, Pacific Institute
<u>16.</u>	5/2006	Hazard: The Future of the Salton Sea With No Restoration Project, Pacific Institute
<u>17.</u>	10/10/2003	Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement
<u>18.</u>	11/2013	Salton Sea Restoration Fund, Auditor's Report 2013-101
<u>19.</u>	1/30/2015	Excerpt of California Water Action Plan Implementation Report 2014-2018, Action No. 4, pp. 8, 15
<u>20.</u>	1/2013	Excerpt of California Water Plan Update, Vol. 2, Regional Reports (Colorado River Hydrologic Region), pp. CR-24 – CR-25
<u>21.</u>	1/2013	Excerpt of California Water Plan Update, Vol. 3, Resource Management Strategies, Ch. 8 (Water Transfers), p. 8-9, Ch. 22 (Ecosystem Restoration)