

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF IMPERIAL, IMPERIAL
COUNTY AIR POLLUTION CONTROL DISTRICT AND IMPERIAL IRRIGATION DISTRICT
CONCERNING SALTON SEA STABILIZATION AND RESTORATION**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into on this 24th day of October, 2013 (“Effective Date”), by and between the **County of Imperial**, a political subdivision of the State of California, and the **Imperial County Air Pollution Control District** (“Air District”), a county air pollution control district, referred to collectively as (“County”) and **Imperial Irrigation District** (“IID”), a California irrigation district. County and IID may be referred to herein individually as “Party” or collectively as the “Parties.”

WHEREAS, the inflow of water to the Salton Sea is currently decreasing; and

WHEREAS, when the QSA mitigation water delivered to the Salton Sea ends on December 31, 2017, inflow of water to the Salton Sea will dramatically decrease and, without restoration, will quicken the decline of the Salton Sea; and

WHEREAS, while the State of California (“State”) is obligated to pay for restoration costs at the Salton Sea pursuant to Fish & Game Code § 2931 *et seq.*, the State has not appropriated all of the necessary funding, and until it does, the Salton Sea is at risk of irreversible damage and destruction; and

WHEREAS, the Parties desire to work together and take cooperative actions to further Salton Sea restoration and to support the Salton Sea Authority (“SSA”) in such restoration efforts, which would protect public health and the environment at the Salton Sea and the surrounding Imperial County and Riverside County communities; and

WHEREAS, the Parties also desire to develop renewable energy resources and necessary infrastructure around the Salton Sea area to generate funding for its restoration. It is the Parties’ intention that these funds be used to bolster the State’s efforts in meeting its obligation to fund restoration. State appropriation would still be required, albeit less, to meet this restoration obligation; and

WHEREAS, the Parties agree that sufficient water for Imperial County agricultural, municipal and industrial uses is a critical and an indispensable priority. After these needs are satisfied, Colorado River water will be an essential part of stabilization and restoration of the Salton Sea; and

WHEREAS, this MOU is intended to survive and continue beyond final resolution of the QSA Coordinated Cases. The Parties do not intend for this MOU to be affected by or be dependent upon any particular outcome, result, settlement or judgment of the QSA Coordinated Cases.

For good and valuable consideration, the Parties agree as follows:

1. **No Future Transfers.**

IID will not take any action nor enter into any agreement that would result in any additional water transfers. IID and County will vigorously oppose any effort by any entity to do so.

IID agrees to withdraw its pending Petition for Change of the State Water Resources Control Board Revised Order WRO 2002-0013. IID agrees to withdraw the Petition within ninety days of the Effective Date of this MOU.

2. **Damage to the Salton Sea Will be Severe.**

When QSA mitigation water delivered to the Salton Sea ends on December 31, 2017, dramatically decreased inflows of water to the Salton Sea will lead to decline of the Salton Sea more quickly unless a restoration plan is determined, funded and implemented. The decreased inflows will expose playa and result in increased amounts of dust and air pollution known as PM₁₀ that are harmful to public health and the environment. PM₁₀ causes serious health risks for everyone, especially children, the elderly and those suffering from asthma or bronchitis. The Salton Sea's receding shoreline will create substantial negative ramifications to fish, birds and other wildlife habitat.

Any increased levels of PM₁₀ will make it difficult to reach attainment of the National Ambient Air Quality Standards ("NAAQS"). If Imperial County does not timely reach and maintain attainment, the U.S. EPA could impose sanctions that could freeze millions of dollars of federal transportation funding and increase PM₁₀ offset costs for new and expanding businesses. Such sanctions will effectively devastate economic development in Imperial County, which already has the highest unemployment in the State and at times in the Nation.

Air Quality. IID recognizes the Clean Air Act requires Imperial County to attain and maintain the PM₁₀ NAAQS and that the Air District is the sole entity statutorily responsible for establishing requirements to reach attainment for PM₁₀ emissions and comply with the other Clean Air Act requirements. The Air District may need to, among other things, develop and adopt a new State Implementation Plan ("SIP") that addresses the emissions caused by the receding Salton Sea, develop and adopt annual network ambient air quality monitoring plans, operate ambient air quality monitors and adopt, implement and enforce new rules. The Parties desire to work together to avoid the possibility of U.S. EPA-imposed sanctions that could freeze certain transportation funding and increase the cost of PM₁₀ emissions necessary for economic development and generation of renewable energy. IID will make good faith efforts to cooperatively work with the Air District with regard to these activities. IID and County shall enter into an MOU to address cost-sharing and details of cooperative efforts with regard to these Air Quality activities.

3. Funding Estimates for Restoration of Salton Sea.

California – Preferred Plan, \$8.9 Billion (in 2006 dollars). The state of California, Secretary for Resources, recommended a preferred plan for restoration of the Salton Sea that will cost an estimated \$8.9 billion in 2006 dollars to construct, but has not appropriated funds for this plan.

County and IID – Salton Sea Authority Restoration Plan, \$2.2 Billion (in 2006 dollars). The Parties endorse and agree to cooperatively work with the SSA toward the implementation of the *Salton Sea Authority Plan for Multi-Purpose Project*, dated July 2006, which the Parties acknowledge should be updated, revised or superseded by a new restoration plan consistent with inflow estimates and projected revenue (“Modified SSA Restoration Plan”) that may result in a smaller but sustainable Salton Sea. The Parties agree that the Modified SSA Restoration Plan shall recognize the Known Geothermal Resource Area (“KGRA”) and provide for recreational uses in Imperial County. Air quality, providing fish and wildlife habitat, recreation, stabilization of the Salton Sea elevation and salinity, and water quality improvement shall serve as the key foundational elements to the Modified SSA Restoration Plan. Notwithstanding, the Parties agree to continue to consider other concepts such as the Sea to Sea Plan.

4. State Obligation to Fund Salton Sea Restoration.

California Fish & Game Code § 2931 declares that “[i]t is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem.” IID entered into the QSA in reliance upon the State fulfilling its restoration obligation. To date, the State has not yet appropriated the necessary funds to fulfill its obligation to restore the Salton Sea.

It is not the Parties’ intention to relieve the State of this obligation in any way. Rather, it is the Parties’ intention that these local funds be used to bolster the State’s efforts in meeting its obligation to fund restoration and to prevent irreversible damage to the Salton Sea as a result of its delay in appropriating funds.

5. Cooperation in Seeking Federal, State and Local Funding before December 31, 2017.

There is an urgent need to immediately obtain funding from all available local, state, and federal sources because the delivery of the mitigation inflow water to the Salton Sea will end on December 31, 2017.

County and IID will enter into an MOU to work cooperatively to develop geothermal, solar, wind, algae and solar gradient ponds (“Renewable Energy”) in the KGRA and around the Salton Sea and a transmission line to generate local funding for restoration of the Salton Sea. IID pledges the use of its land and mineral assets in the KGRA and the area around the Salton Sea for Renewable Energy development to further Salton Sea

stabilization and restoration activities. IID agrees it will open up a certain period of time during which potential developers within the Renewable Energy development community can bid for development of Renewable Energy projects on IID-owned property in the KGRA in order to create public-private partnerships that will contribute to Salton Sea stabilization and restoration funding.

In addition, the Parties will jointly pursue a strategy to secure funding and supportive actions from the state and federal government to pay for stabilization and restoration of the Salton Sea.

The Parties agree to use their best efforts to secure the following from the State:

Fulfillment of its obligation to pay for restoring the Salton Sea; commitment to construct and fund a transmission line; pledging the use of State land at the Salton Sea to support development of Renewable Energy; mitigation of dust at State-owned property at Salton Sea; encouraging desalinization and the development of alternate sources of water to satisfy coastal water needs; and acknowledgement that using water for mitigation and restoration at the Salton Sea is a reasonable and beneficial use.

The Parties agree to use their best efforts to secure the following from the Federal government:

Pledging the use of federally owned land at the Salton Sea for renewable energy; mitigation of dust at federally owned property at the Salton Sea; adoption of an energy surcharge at Hoover Dam; and acknowledgement that using water for mitigation and restoration at the Salton Sea is a reasonable and beneficial use.

6. Transmission Line.

In order to secure sufficient renewable energy resources that will contribute to Salton Sea stabilization and restoration, the Parties agree that a transmission line must be timely constructed. IID and County agree to work cooperatively and utilize their best efforts to jointly pursue a State commitment to build and fund a transmission line interconnecting IID's system for grid reliability with the export capacity of 1,400-1,700 megawatts ("MW") to transport Renewable Energy from the Salton Sea KGRA to the load centers throughout the State. The Parties understand that with this State commitment will come the explicit acknowledgement of up to 1,400 MW of Resource Adequacy under the California Public Utility Commission's Resource Adequacy program and power purchase agreements for an equivalent volume of must-take generation. The Parties recognize that the full build-out of 1,700 MW of Renewable Energy generation may require up to 10 years to be completed. County agrees to cooperatively work with IID on transmission siting.

7. **Energy Balancing Authority.**

The Parties' agreement in pursuit of a transmission line at or near the KGRA under this MOU is intended to memorialize the Parties' common interest in preserving IID as an energy balancing authority, as well as the local rate-setting powers of the IID Board of Directors.

8. **Recognition of Parasitic Load.**

IID and County agree to pursue obtaining necessary approval that would recognize parasitic load (power that is generated by geothermal plants and then consumed to operate such plants) as renewable energy in the IID service area that would count toward IID's renewable portfolio standard.

9. **Alternative Water Supplies.**

The Parties agree that it is desirable to augment, if possible, the water supply available for the agricultural, municipal, industrial and environmental uses, to minimize the impacts of Colorado River water shortages, and to develop an alternative source of water to sustain the Salton Sea under the Modified SSA Restoration Plan.

IID will hire, in consultation with County, one or more consultants at IID's expense to evaluate alternative water supplies to determine whether any alternative water supplies can be reasonably developed, the potential amount of water that can reasonably be expected from each alternative source and, to the extent feasible, expected costs, potential environmental issues and other constraints that will need to be addressed ("Alternative Water Analysis"). The Alternative Water Analysis shall include an evaluation of the potential for an alternative water supply from sea water for use at the Salton Sea and augmenting water supplies with local groundwater resources and reclaimed water.

Based on the Alternative Water Analysis, the Parties will mutually agree which of the alternative water supplies should be pursued. The Parties agree to use their best efforts to secure the alternative water supplies mutually agreed upon. Nothing in this Section shall preclude one Party to independently pursue any alternative water supply at that Party's sole expense or for the Parties to work together to secure other alternative water supplies not included in the Alternative Water Analysis.

The County and IID agree to encourage the State's coastal communities to pursue desalinization.

10. **Water Uses.**

The Parties agree that it is necessary to have sufficient water for all agricultural, municipal, industrial and environmental uses within Imperial County.

11. Reasonable and Beneficial Uses of Water.

The Parties agree that Colorado River water is essential to implementing the Modified SSA Restoration Plan. The Parties agree that the United States Department of the Interior and the California State Water Resources Control Board must agree that the use of water for restoring the Salton Sea, and the mitigation of air quality and other impacts at the Salton Sea, constitute reasonable and beneficial uses of Colorado River water under federal and state law.

12. Termination.

Due to critical impact of mitigation inflow water to the Salton Sea ending on December 31, 2017, this MOU may not be terminated on or before January 1, 2018. After January 1, 2018, either Party may terminate this MOU at any time upon an affirmative vote of the governing body of that Party.

13. Default.

Prior to the initiation of any legal action for a default of this MOU, the Parties shall meet to discuss resolution of the alleged default before initiating litigation. Each Party shall bear its own attorneys' fees and costs incurred in connection with meeting to resolve the alleged default, unless the Parties agree in writing otherwise.

14. Cooperation with Other Agencies; Third-Party Beneficiaries.

This MOU envisions working cooperatively with the SSA and other agencies. However, these agencies are not third-party beneficiaries of this MOU, and their non-action is not a breach of this MOU. The Parties do not intend to create rights in or to grant remedies to any third-party as a beneficiary of this MOU.

15. Waiver and Severability.

No waiver of any provision of this MOU shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing. In the event there is a final court judgment determining that any phrase, clause, sentence, paragraph, section, article or other portion of this MOU is illegal, null or void, the remaining portions of this MOU shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

16. Integration.

This MOU is intended by the Parties to be the final expression of their agreement with respect to the subject matter of this MOU and the complete and exclusive statement of the terms of this MOU between the Parties, and supersedes any prior understandings between the Parties, whether oral or written.

17. No Limitation on the Parties.

Nothing in this MOU shall be construed to be in derogation of any Party's powers, authority, policies, rules, regulations or codes.

18. Defense of MOU.

In the event that any judicial or electoral challenge to this MOU is brought by a third party ("Third-Party Challenge"), then the Parties agree to cooperate in the defense of such Third-Party Challenge. The Parties shall meet and confer in good faith to agree upon a joint defense of such Third-Party Challenge. The Parties shall each engage their own counsel and each pay for their own attorneys' fees in connection with such Third-Party Challenge.

19. Binding Effect and Representations.

The provisions of this MOU shall be binding upon and inure to the benefit of the Parties and their respective successors. The Parties hereby represent that on and as of the Effective Date of this MOU, each of the Parties have full capacity, right, power and authority to execute, deliver and perform this MOU. The individuals signing this MOU are duly authorized to sign the same on the Parties' behalves and to bind the Parties thereto.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the last date written below.

COUNTY OF IMPERIAL AND IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT:


Dated: October, 24, 2013

By: 
Raymond Castillo, Board Chair

By: 
Jack Terrazas

By: 
John Renison

By: 
Ryan E. Kelley

By: 
Michael W. Kelley

APPROVED AS TO LEGAL FORM:


By: 
Michael L. Rood, County Counsel

IMPERIAL IRRIGATION DISTRICT:

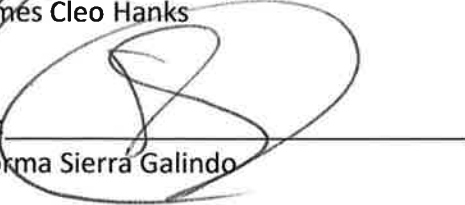
Dated: 24 October 2013

By: 
Matt Dessert, Board President

By: 
Bruce Kuhn

By: 
James Cleo Hanks

By: 
Stephen W. Benson

By: 
Norma Sierra Galindo

APPROVED AS TO LEGAL FORM:

ATTEST:

By: 
Ross G. Simmons, Interim General Counsel

By: 
Gloria A. Rivera, Secretary to the Board