



South Coast Air Quality Management District

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Office of the Executive Officer
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March 11, 2015

Via U.S. Mail & E-mail [commentletters@waterboards.ca.gov]
Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
10011 I Street 24th Floor
Sacramento, CA 95814

Re: Comment Letter: Salton Sea

Dear Ms. Townsend:

Introduction

The staff of the South Coast Air Quality Management District (SCAQMD) supports the Petition for Change filed by the Imperial Irrigation District (IID) seeking modification of Revised Order WRO 2002-0013, which approved a long-term transfer from IID to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD), and Metropolitan Water District of Southern California (MWD).

The SCAQMD is the air pollution control agency for the South Coast Air Basin and the Coachella Valley. The South Coast Air Basin includes all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. The northern portion of the Salton Sea is within the SCAQMD and is considered part of the Coachella Valley. Therefore, the SCAQMD has a significant stake in this matter.

IID's obligation to deliver mitigation water to the Salton Sea under Order WRO 2002-0013 will end on December 31, 2017. The loss of that water is expected to result in the exposure of dry lakebed ("playa"), increasing particulate matter levels in Imperial County and the Coachella Valley. Both of these areas are already categorized under the Clean Air Act as "nonattainment" for particulate matter under 10 microns in diameter ("PM10"). That means those areas do not meet the standards established by the U.S. Environmental Protection Agency for the protection of public health. The Imperial County Air Pollution Control District ("ICAPCD") has estimated that the water transfer may increase PM10 emissions by an amount exceeding three times the current level of emissions in the Imperial Valley. This will greatly increase the difficulty of reaching health-based standards for particle pollution in Imperial County and the Coachella Valley.

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At the time the Quantification Settlement Agreement Contracts were entered, it was well known that the water transfer would cause a variety of adverse impacts. Accordingly, the State of California “unconditionally” committed to pay *all* costs of mitigation beyond those committed by IID and the receiving water agencies. *QSA Cases*, 201 Cal. App. 4th 758, 796-797 (2011). However, the court concluded that absent legislative appropriation to meet this obligation, “the water agencies could be left with an *unenforceable* judgment for the unpaid excess mitigation costs....” *QSA Cases*, 201 Cal. App. 4th 758, 796-797 (emphasis added). To date, no plan for mitigation has been funded. Therefore, it is incumbent on your Board to initiate an effort to develop a realistic mitigation and funding plan, and then to modify its order by requiring the State to fulfill its commitments as a condition of continuing water transfers.

Workshop Issues

The SCAQMD is concerned that certain language in the notice of Public Workshop and Solicitation of Comments in this matter appears to pre-judge some of the issues in this proceeding in a manner prejudicial to the IID petition. First, the notice states that the relief requested by IID may not be appropriate because even though the water transfer has the potential to exacerbate air and water quality problems, “those problems would exist in the absence of the transfer.” This represents a logical and legal fallacy that essentially says if an area already has air pollution problems, it is acceptable to make them significantly worse.

The ICAPCD identified the effects solely of the water transfer, not anything else happening with the Salton Sea, as causing new PM10 emissions equal to triple the current emissions. Tripling or more the particulate pollution in the area due to the water transfer is not acceptable. The Court of Appeal firmly rejected an environmental analysis that reasoned that “the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.” *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 718 (1990). Your Board should not adopt that same fallacy.

The Workshop Notice further states that “making approval contingent on restoration of the Salton Sea has the potential to unravel the complex series of agreements that make up the QSA, which would have significant water supply implications for the state.” This sentence ignores the fact that the QSA Agreements were originally based upon the assumption that the adverse air pollution impacts of the water transfers would be mitigated, although the exact extent of this commitment may be subject to dispute.

Indeed, the refusal of your Board to make future water transfers conditional upon an acceptable and funded mitigation plan is more likely to unravel the QSA Agreements. The County of Imperial, the Imperial County Air Pollution Control District, and other parties have challenged the certification of environmental documents supporting the QSA Agreements, precisely on the ground of inadequate mitigation. Quantification Settlement Agreement Cases, Third District Court of Appeal No. C074592. Imperial County and ICAPCD have entered into a Settlement Agreement with IID that was predicated on the success of IID’s petition before your Board, among other things. Absent this Settlement Agreement, the CEQA challenge would have

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proceeded, having the potential to invalidate the environmental documents and, accordingly, setting aside approval of the QSA Contracts.

Importance and Feasibility of Mitigating Adverse PM10 Impacts

U.S. EPA established national ambient air quality standards for PM10 starting in 1987. 52 Fed. Reg. 24,634 (Jul. 1, 1987). Recently, EPA reaffirmed the 24-hour average standard of 150 micrograms per cubic meter. 78 Fed. Reg. 3086 (Jan. 15, 2013). These particles threaten health because they can be inhaled deep into the lungs. *Id.* at 3164. PM10 exposures are associated with serious health effects, including premature death, heart or cardiovascular effects resulting in hospital admissions and emergency room visits, and adverse respiratory effects. *Id.* at 3167. People with pre-existing heart or lung disease, those of lower socioeconomic status, children, and the elderly are especially vulnerable to PM10-related health effects. *Id.* at 3167. Some studies have specifically linked morbidity (illness) and mortality (premature death) to relatively high concentrations of particles of “crustal origin.” *Id.* Such “crustal” particles would be representative of windblown dust from the Salton Sea dry lakebed, with the potential for additional health impacts due to historical inflows of toxic metals and pesticide residues. Windblown dust is no mere nuisance but a significant health hazard. *Vigil v. Leavitt*, 381 F.3d 826, 830 (9th Cir. 2004).

EPA has classified both the Imperial Valley and the Coachella Valley as “serious” nonattainment for PM10 (the worst classification). This means that levels of PM10 pollution in these areas already threaten the health of local residents. The northern part of the Salton Sea, which is in the Coachella Valley, is very close to environmental justice and tribal communities in the city of Mecca and the Torres Martinez reservation. Tripling or more the PM10 pollution impacting these areas would have a commensurate adverse impact on public health. It is imperative that measures be designed and funded to avoid these impacts which will occur once water replenishment ends in 2017.

SCAQMD staff supports full restoration as the preferred means of mitigating air quality impacts because it would also preserve habitat and recreational values that are of statewide and national concern. However, it is possible that a plan and adequate funding for full restoration of the Salton Sea may take a longer time to develop and implement. SCAQMD staff, therefore, urges that in the interim, a plan for mitigation of the air quality impacts of the transfer be promptly developed and implemented, and made a condition of future water transfer deliveries after the end of 2017. We are mindful that the State is experiencing a severe drought. However, there are feasible measures to reduce dust impacts that are less water-intensive than fully replenishing the Sea. These measures include shallow flooding, planting low-water-use vegetation, and applying a layer of gravel to the exposed playa. (Schade et al., “Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan,” pp. S-5 through S-15 (Nov. 16, 1998) http://www.arb.ca.gov/planning/sip/planarea/gbasin/owens/owens_1998sip.pdf.) Therefore, even in today’s drought conditions, there are available and feasible mitigation measures that could be used in the interim while a plan for full restoration is being developed. We recognize

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that dust mitigation measures must be carefully balanced with other needed benefits such as preserving the value of the lake for migratory birds, but we urge that interim dust control measures be implemented to avert a looming public health crisis if a comprehensive solution is not rapidly developed and implemented.

Thank you for the opportunity to comment on this important issue. If you have any questions, please feel free to contact me at bwallerstein@aqmd.gov or 909-396-2100.

Respectfully submitted,

A handwritten signature in black ink that reads "Barry R. Wallerstein". The signature is written in a cursive style with a prominent initial "B".

Barry R. Wallerstein, D.Env.,
Executive Officer

cc: Chairman William A. Burke
Supervisor John Benoit