



## **FARMERS-Farmers Associated for Responsible Mitigation Enforcement Remedies and Solutions**

FARMERS (Farmers Associated for Responsible Mitigation Remedies and Solutions) is a group of 8 farmers seeking to enforce mitigation promises made in the Quantification Settlement Agreement (QSA-JPA). It was known at the time of the execution of the Quantification Settlement Agreement that transfers of water to the San Diego County Water Authority and the Coachella Water District contemplated by that agreement would result in less water going to the Salton Sea. Without mitigation measures the reduced flows to the sea would cause the sea level to fall. This in turn would result in exposed playas and increased salinity. Wind blowing across these playas would create dust which would have an adverse impact on Imperial Valley air quality. Metals and minerals in this dust would also have an adverse impact on crops, humans and livestock. Reduced inflows to the sea would increase salinity in the Salton Sea which could have the effect of eliminating the fishery and the birds which rely on those fish for food.

In recognition of the fact that there would be severe environmental impacts by reason of the decreased flows the parties to the Quantification Settlement Agreement, [STATE OF CALIFORNIA acting by and through the DEPARTMENT OF FISH AND GAME ("State"), the COACHELLA VALLEY WATER DISTRICT, ("CVWD"), the IMPERIAL IRRIGATION DISTRICT, ("IID") and the SAN DIEGO COUNTY WATER AUTHORITY, ("SDCWA")] included provisions for mitigation and remediation. Funding for mitigation and remediation was to be provided by a fund created by COACHELLA VALLEY WATER DISTRICT, ("CVWD"), the IMPERIAL IRRIGATION DISTRICT, ("IID") and the SAN DIEGO COUNTY WATER AUTHORITY, ("SDCWA") in the following amounts as expressed in 2003 dollars.

CVWD	\$36,717,791
IID	\$30,000,000
SDCWA	\$52,220,859

The IID was to also make an additional contribution pursuant its obligation under Section 4.1(2) of the ECSA (Environmental Cost Sharing, Funding and Habitat Conservation Plan.

Development Agreement among CVWD, IID, and SDCWA ("ECSA"). having a present value (2003) of \$14,061,350. The State of California was to provide all funding in excess of \$133,000,000. QSA JPA ¶14.3 (the "Environmental Mitigation Cost Limitation" QSA JPA ¶9.2 states:

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.

As set forth in the IID's petition, the State has not honored its promises. It would be folly to allow the transfers to SDCWA and CVWD to continue absent mitigation and restoration. Continued transfers. At this very minute residents of the Imperial Valley are breathing air which is contaminated with dust from the lowering of the Sea. That dust is falling on crops and livestock. After hearing several weeks of testimony in the first trial of the Quantification Settlement Litigation, Judge Roland L. Candee issued a judgment denying validation. On page 33 of that opinion, Judge Candee stated "The Audubon Society labeled the Salton Sea an 'environmental Chernobyl' in 1999." On the same page he quoted from the EIR/EIS prepared for the IID Transfer Project as follows:

"[With no restoration project] the salinity of the Salton Sea would exceed the level at which sargo, gulf croaker, and tilapia could complete their life cycles ... in 2008, 2015, and 2023, respectively."  
"[A]t current rates of salt loading of 4 million tons of salts per year, the Salton Sea will be unsuitable for fish and other wildlife in 15 years."

FARMERS share the concern of The Audubon Society and Judge Candee. Those of us who live here believe that we hover on the brink of disaster.

The State Water Resources Control Board and the State of California Regional Water Quality Control Boards are the state agencies with primary responsibility for the coordination and control of water quality. Water code §§25; 13104 et seq. State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control. Water Code § 13146. Thus, it is entirely appropriate that the State Water Resources Control Board take steps to insure that the necessary and agreed upon restoration steps are taken to prevent further deterioration of the water quality of the Salton Sea and the air quality of the Valley.

On the other hand, if this board elects to take no action to enforce the State's agreement to mitigate and restore the Salton Sea, the Board should state that it has elected not to exercise jurisdiction of the enforcement issue. Thus, making it clear to the courts that inaction by the State Water Resources Control Board is not a bar to seeking judicial remedies for breach of contract.