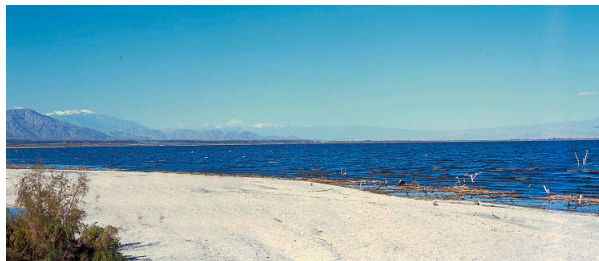




# QSA Litigation Bulletin: Environmental Impact

April 2009

The County of Imperial and its Air Pollution Control District are parties to litigation involving the Quantification Settlement Agreement ("QSA") and related state and federal agreements. The QSA and the related agreements were signed in October 2003 and involve agreements between the Imperial Irrigation District ("IID"), San Diego County Water Authority ("SDCWA"), Coachella Valley Water District ("CVWD"), and Metropolitan Water District of Southern California ("MWD") among others. In summary, the agreements provide for IID to conserve and transfer up to 200,000 acre-feet annually ("afa") of Colorado River water to SDCWA and 100,000 afa of Colorado River water for acquisition by CVWD and/or MWD for a period of 35 to 75 years. The agreements also quantify and prioritize Priorities 3 and 6 within California for the use of Colorado River water.



Salton Sea

IID brought litigation to "validate" 13 of the QSA related contracts as complying with California and federal law. The litigation also involves a review of the IID environmental impact report ("EIR") for the water transfers and the IID, SDCWA, MWD and CVWD program EIR for the QSA. Both the County and Air District answered IID's validation complaint. The case is currently pending with other related cases known as the "QSA Coordinated Proceeding" in Superior Court in Sacramento County. After 5 years of procedural maneuvering by IID and the other water agencies, the trial court is expected to consider the validity of the 13 contracts and the EIRs this summer, 2009.

The County and Air District also challenged the State Water Resources Control Board's ("State Board") approval of IID's and SDCWA's application for the water transfers because it is also based on the same faulty EIR. The County's and Air District's cases were dismissed on a technicality. The Court of Appeal is also expected to rule this summer on the dismissal of the Air District's case against the State Board.

## County of Imperial's Concerns About the QSA's Negative Impact to the Valley's Economy and Health of its Residents

In order for IID to transfer Colorado River water to SDCWA and for acquisition by CVWD and/or MWD, the water must be somehow conserved. Conservation can have negative consequences for the Imperial Valley when it involves the fallowing of farmland and any conservation methods that reduce the agricultural inflow to the Salton Sea. Idle farmland can result in fewer agriculture jobs and a corresponding negative effect on businesses that support agriculture in the Imperial Valley.

Almost the entire inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The QSA

water transfers from the Imperial Valley to San Diego will reduce the Salton Sea's water level and expose significant amounts of previously submerged shoreline. Estimates of newly exposed shoreline range from 16,000 to 82,000 acres. The newly exposed shoreline is expected to cause air quality problems, primarily from blowing dust. The fine particulates, known as PM<sub>10</sub> (particulate matter less than 10 microns in size), in blowing dust are a health concern and regulated by the California and Federal Clean Air Acts. According to the California Air Resources Board, PM<sub>10</sub> particles easily penetrate into the airways and lungs where they may produce harmful health effects such as the worsening of heart and lung diseases. The risk of these health effects is greatest in the elderly and the very young. Exposure to elevated concentrations of PM<sub>10</sub> is also associated with increased hospital and doctor visits and increased numbers of premature deaths. There is also a risk of exposure to airborne toxic chemicals, including possibly arsenic, cadmium, copper, lead, molybdenum, nickel, selenium and zinc as a result of a decreasing Salton Sea shoreline. These toxic chemicals are believed to exist in the upper foot of the Salton Sea sediment and may become airborne as the shoreline is exposed. The air quality "mitigation" identified in the water transfer EIR and the QSA program EIR is wholly insufficient to address these environmental impacts.

The Owens Lake experience provides a glimpse into the future for the Imperial Valley if the potential air quality problems resulting from the QSA and water transfers are not adequately addressed at the Salton Sea. In the late 1800s and early 1900s, the Los Angeles Department of Water and Power ("LADWP") acquired a majority of the land, and its water rights, in the Owens Valley, and later constructed the Los Angeles Aqueduct to rerouted the Owens River—Owens Lake's primary water source—to Los Angeles. Without the river water, by about 1924 Owens Lake dried up. Today, Owens Lake is the largest stationary source of pollution in United States. The wind-blown dust violates the federal ambient air quality standard for PM<sub>10</sub> 20-30 times a year. If the exposed shoreline at the Salton Sea results in PM<sub>10</sub> emissions only 1% of the emissions caused by the exposed shoreline at Owens Lake, the emissions could be significant, possibly resulting in 24-hour concentrations of PM<sub>10</sub> between 300 to 4,000 micrograms per cubic meter ("µg/m<sup>3</sup>"), far exceeding the federal health based standard of 150 µg/m<sup>3</sup>.

Currently, the County Air District is proposing that the Imperial County be designated in attainment with the federal PM<sub>10</sub> standard. However, attainment of the federal PM<sub>10</sub> standard could be jeopardized by the water transfer resulting in exposing

more of the Salton Sea shoreline. If the federal PM<sub>10</sub> standard is subsequently exceeded because of the water transfers, the County could be subsequently re-designed by the federal government as a nonattainment area for PM<sub>10</sub>. A nonattainment rating for PM<sub>10</sub> because of the Salton Sea will have significant ramifications for the entire County. In addition to the health concerns mentioned above, the federal Clean Air Act requires nonattainment areas to implement best available control measures for PM<sub>10</sub>. EPA may impose this requirement on all sources in the County even though the PM<sub>10</sub> emissions would occur at the Salton Sea. This could mean more stringent controls for construction, paved roads, farming, and other activities that cause PM<sub>10</sub> emissions. So, in addition to presenting a cost issue and health issue, failure to mitigate air quality presents an economic threat to the entire County. The County and its Air District seek to avoid this outcome by requiring those that benefit from the QSA and water transfers to pay for and assure that the air quality is not compromised as a result.



*Owens Lake Dust Storm*

It took extensive litigation and finally legislation (SB 270 in 1983) before LADWP agreed in a 1997 Memorandum of Understanding (MOU) and 2006 Settlement Agreement to reverse the damage at Owens Lake. The legislation, codified as section 42316 of the California Health and Safety Code, allows for the Great Basin Unified Air Pollution Control District to require LADWP to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and may require the City to pay, on an annual basis, reasonable fees, based on an estimate of the actual costs to the Great Basin APCD of its activities associated with the development of the mitigation measures and related air quality analysis with respect to those activities of the City.



*Owens Lake (dry)*

The cost to fix the damage at Owens Lake is enormous. Mitigating dust for 29.8 square miles of Owens lakebed was estimated to be about \$400 million, plus mitigation water the City of Los Angeles must purchase from MWD to wet Owens Lake. The City estimates that to date it has spent a total of \$1 billion on construction, maintenance, operation, consultants, and replacement water. The 2006 Settlement Agreement between the Great Basin APCD and the City requires much more – no cost estimate yet for what it will take to completely comply with the Settlement Agreement. The costs are being passed on to LADWP ratepayers. The \$1 billion dollar price tag does not include any costs that the Great Basin APCD must pay to prepare air quality management plans, monitor air quality, and enforce the agreement.

For the Salton Sea, a Joint Powers Agreement (that neither the County nor its Air District are a part of) imposes a limit of \$133 million on the IID, SDCWA and CVWD to pay for all mitigation associated with the water transfers, not just air quality. This limit is substantially less than the estimated mitigation costs

expected based on the Owens Lake experience. The rest of the mitigation costs is supposed to be paid by the State of California. There is no assurance that the money will be forthcoming; the budget difficulties are well known and to date the Legislature has not made any substantial Salton Sea investments, and in any case, the Legislature may not be forced to make the necessary appropriations.

According to the Air District's current rules, if there is dust coming from the exposed shoreline, the landowners are required to implement and pay for the mitigation. One of the significant landowners at the Salton Sea is IID itself. If the State does not produce sufficient funding for the shortfall, then the Salton Sea landowners may need to pay what could be an almost \$1 billion dollar price tag for the mitigation. Again, this does not pay for the Air District's regulation costs. If the beneficiaries are not held responsible for the environmental clean up, the primary entity that will be left is IID. Ultimate success in the litigation would enable a renegotiation of the QSA to ensure that MWD and SDCWA (the beneficiaries), and not IID ratepayers and the vulnerable California state general fund, meet these obligations.

***The County and its Air District's Participation in the QSA Litigation is Necessary to Ensure the Public Is Protected***

The Imperial County citizenry are not protected by the QSA and its related agreements. With the QSA, there is a potential for the public's health to be affected by windblown dust from the Salton Sea, and for those that benefit from the QSA and water transfers to avoid accountability for the environmental and economic impacts they cause to Imperial Valley. Through the QSA litigation, the County and its Air District seek to:

- make those that benefit from the QSA and water transfers accountable to pay for and ensure the environmental and economic impacts are fully mitigated.
- obtain legally enforceable commitments and funding for sufficient air quality mitigation, both for Salton Sea and following impacts.

The validation action brought by IID is the time for the County and its Air District to seek these requirements. Without the opportunity created by IID's validation action and the County's separate litigation against the QSA and water transfer EIRs, it will be more difficult to require mitigation of these impacts in the future short of legislation similar to Owens Lake.