

DRAFT MEMORANDUM OF UNDERSTANDING

Desert Shores Channel Restoration Project

This This Memorandum of Understanding (“MOU”), is made and entered into this 28th day of July, 2020, by and between the **IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT**, (“ICAPCD”), an air pollution control district formed and existing pursuant to California Health and Safety Code section 40002, and **THE STATE OF CALIFORNIA**, acting by and through the **CALIFORNIA NATURAL RESOURCES AGENCY** (“CNRA”) (individually, “Party;” collectively, “Parties”).

A. INTRODUCTION AND BACKGROUND.

1. The Salton Sea is California’s largest lake and is a critical stop on the Pacific Flyway, benefiting many species of resident and migratory birds. The Salton Sea is receding, and its salinity has increased substantially as inflows to the Sea have declined, exposing emissive lakebed which contributes to worsening air quality in the region and impacts the County of Imperial’s affordable housing opportunities, natural habitat and wildlife, and recreational opportunities.
2. The state is committed to restoring the Salton Sea, and the numerous demands on and interests in restoration at the Salton Sea present an opportunity for governmental agencies and the local and state levels to collaborate to enhance outcomes of that restoration.
3. The ICAPCD and CNRA have significant and complementary interests regarding development and enhancement of activities that stabilize and restore the Salton Sea. The Desert Shores Channel Restoration Project (“Project”) proposes to improve air quality by refilling channels located between residences on the Salton Sea shoreline in the disadvantaged community of Desert Shores. The Project proposes to refill the channels with Salton Sea water at near-historic levels.

B. PURPOSE.

The purpose of this MOU is to document the Parties’ intent to coordinate and collaborate on the Project.

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1 **C. AUTHORITY.**

- 2 1. CNRA is entering this MOU pursuant to the Salton Sea Restoration Act, Fish & Game Code
3 section 2930 *et seq.*
4 2. ICAPCD is entering this MOU pursuant to section 40701 of the California Health and Safety
5 Code.

6 **D. OBJECTIVES.**

7 The Parties affirm their intent to undertake the following objectives:

- 8 1. Public Benefit. The Parties understand that the Project must show a public benefit to be
9 eligible for bond funding. The Parties acknowledge that the Project's public benefit is
10 expected to be related to air quality or habitat, consistent with the primary goals of the Salton
11 Sea Management Program ("SSMP"). To that end, the Parties intend to take the following
12 actions to document the Project's funding eligibility:

- 13 a. CNRA intends to be responsible for the analysis and documentation of the Project's
14 public benefits and intends to complete such analysis and documentation through the
15 National Environmental Policy Act ("NEPA") compliance process, as discussed in
16 Section D(2) below.
17 b. ICAPCD intends to provide CNRA with supplemental information relating to the
18 Project upon CNRA's request, including but not limited to air quality data and Project
19 cost and design elements.
20 c. The Parties acknowledge that CNRA cannot fund the Project if it does not provide a
21 documented public benefit consistent with the goals of the SSMP.
22 i. If CNRA determines that the Project is not eligible for funding under the
23 SSMP, CNRA intends to assist the ICAPCD in identifying potential alternative
24 funding sources, if the ICAPCD so requests.

- 25 2. NEPA Compliance. CNRA intends to include the Project in its programmatic NEPA
26 document. Inclusion of the Project in CNRA's programmatic NEPA document is intended to
27 provide analysis and documentation of the Project's potential air quality and habitat benefits
28 and allow an opportunity for public input on the Project. Completion of NEPA compliance by

1 CNRA is also intended to allow the ICAPCD to seek federal permits required for future
2 Project implementation. CNRA intends to provide ICAPCD with two weeks advanced notice
3 of public meetings regarding the NEPA process.

4 3. Project Planning. The ICAPCD intends to lead project planning efforts and to act as the
5 project manager and project coordinator for the Project. To that end, the ICAPCD intends to
6 undertake the following activities.

7 a. California Environmental Quality Act (“CEQA”) Compliance. The ICAPCD intends
8 to act as the lead agency under CEQA for the Project. The Parties understand that the
9 CEQA process may occur concurrently with CNRA’s NEPA compliance process and
10 intend to coordinate to ensure consistency in describing the Project description and
11 other relevant information as needed to inform the analysis.

12 b. Permitting. If CNRA funds Project implementation, the ICAPCD intends to assume
13 responsibility for permit applications, water rights, and land use access coordination
14 for the Project. CNRA intends to assist the ICAPCD with permitting by helping to
15 facilitate prompt communication between the ICAPCD and the relevant regulatory
16 agency, if the ICAPCD requests such assistance.

17 4. Implementation Funding. The Parties acknowledge that they cannot make a binding
18 commitment to fund implementation of the Project until the Project’s public benefit has been
19 documented through the NEPA Analysis and CEQA compliance for the Project is complete.
20 However, it is CNRA’s intention to fund the documented public benefits of the Project,
21 subject to CEQA review and funding availability.

22 5. Operations and Maintenance. The Parties acknowledge that SSMP-funded projects must be
23 operated and maintained throughout the anticipated life of the Project. The ICAPCD intends
24 to be responsible for ensuring operations and maintenance of the Project, and the Parties
25 acknowledge that the ICAPCD may assign this responsibility to another qualified public
26 entity. The ICAPCD intends to seek CNRA’s approval of the qualified public entity prior to
27 assigning responsibility for operations and maintenance.
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1 6. Communications. The Parties recognize the importance of clear and consistent public
2 communications regarding the progress of the Project and the Parties' intended actions as
3 outlined in this MOU. The ICAPCD intends to lead outreach and communication efforts
4 regarding the Project, in coordination with CNRA.

5 a. The ICAPCD intends to seek CNRA's prior review and concurrence for any written
6 public communications relating to the Project, including but not limited to press
7 releases and social media posts. Specifically, the ICAPCD intends to communicate the
8 following information to the project proponent and the community of Desert Shores
9 regarding the timeline and expectations for the Project:

- 10 i. The Project will be incorporated into CNRA's programmatic NEPA document.
11 ii. The NEPA analysis will be used to determine the Project's public benefits.
12 iii. CNRA intends to release the project description for public comment in the
13 summer of 2020.
14 iv. Analysis of Project effects and development of details in the NEPA process
15 will be occur over four (4) to six (6) months.
16 v. CNRA anticipates that the draft NEPA document will be released by winter of
17 2020-2021.
18 vi. CNRA anticipates that the NEPA document will be completed by Summer
19 2021, however final timing will be determined by the NEPA federal lead
20 agency.

21 b. The ICAPCD intends to provide CNRA with two weeks advanced notice of any public
22 meetings regarding the Project and to allow CNRA the opportunity to participate in
23 such meeting, in CNRA's sole discretion.

24 c. The ICAPCD and CNRA intend to meet and engage in review of the Project at least
25 once per month.

26 7. Implementation of MOU. To facilitate prompt decision-making, permitting accountability,
27 and high-level coordination, the Parties each intend to identify at least one senior level policy
28 official to oversee the implementation of this MOU.

1 **E. GENERAL TERMS.**

- 2 1. This MOU is not in effect or enforceable until signed by both Parties.
- 3 2. This MOU may be amended or modified only by written mutual consent of both Parties.
- 4 3. Specific activities that involve the transfer of money, services, or property between the Parties
- 5 will require execution of separate agreements or contracts.
- 6 4. Nothing in this MOU is intended to or will be construed to restrict the Parties from
- 7 participating in similar activities or arrangements with other public or private agencies,
- 8 organizations, or individuals.
- 9 5. This MOU does not create an employment, tenancy, or agency relationship between the
- 10 Parties, or any of their officers, employees, volunteers, agents, or contractors.
- 11 6. The Parties anticipate consensus with respect to the implementation of this MOU. If any
- 12 disputes arise between the Parties, the respective representatives and leadership of ICAPCD
- 13 and CNRA intend to work promptly to resolve any such matter.
- 14 7. Neither this MOU nor any duties or obligations hereunder may be assigned by either Party
- 15 without prior written consent of the other Party.
- 16 8. The Parties to this MOU intend to consult with the other Party in a timely manner prior to the
- 17 release of any statements for publication or public dissemination that refers to this MOU, the
- 18 Parties in connection with this MOU, or the name or title of any employee of the Parties in
- 19 connection with this MOU.
- 20 9. This MOU shall remain in effect for an initial term of ten (10) years after its effective date
- 21 and may be renewed if both Parties agree. This MOU may be terminated at any time by
- 22 mutual consent of both Parties, or, unilaterally by either Party after thirty (30)-days written
- 23 notice to the other Party of intent to terminate.
- 24 10. The Parties hereto agree to act in good faith and deal fairly with the other Party.
- 25 11. This MOU is legally nonbinding and in no way: (i) impairs any Party from continuing its own
- 26 planning or project implementation; (ii) limits a Party from exercising its authority in any
- 27 matter; (iii) infers that a Party will act in any particular manner on a project; or (iv) gives any
- 28 of the Parties any authority over matters within the jurisdiction of any other Party. Nothing in

1 this MOU creates any legal rights, obligations, benefits, or trust responsibilities, substantive
2 or procedural, enforceable at law or in equity, by a Party against any other Party, a Party's
3 officers, or any person. Nothing in this MOU authorizes anyone not a Party to this MOU to
4 maintain an action at law or in equity under the provisions of this MOU.

5 12. This MOU does not confer any rights to persons or entities that are not the Parties to the MOU.

6 13. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void,
7 or unenforceable, the remaining provisions shall continue in full force and effect.

8 14. This MOU constitutes the sole and complete understanding between the Parties concerning
9 this matter. Any and all prior agreements, understandings, or statements, if any, are null and
10 void.

11 15. The Parties recognize that all actions contemplated by this MOU are subject to legislative
12 appropriation. Nothing herein shall constitute, or be deemed to constitute, an obligation of
13 future appropriations by the Legislature of the State of California, where creating such an
14 obligation would be inconsistent with Article XVI, sections 1 and 7, of the Constitution of the
15 State of California. Nothing in this MOU is intended or shall be construed to authorize or
16 require the obligation, appropriation, reprogramming, or expenditure of any funds by any
17 Party. Any funding commitment or services, if pursued, will be handled in accordance with
18 applicable laws, regulations, and procedures.

19 16. This MOU may be signed in two or more counterparts each of which, when executed and
20 delivered, shall be an original and all of which together shall constitute one instrument, with
21 the same force and effect as though all signatures appeared on a single document

22 **F. NOTICES.**

23 Any notice required to be given under this MOU shall be in writing and will be served by United
24 States mail or personal service upon the other Party. Notice shall be deemed to have been delivered only
25 upon receipt by the Party, five (5) days after deposit in the United States Postal Service, postage prepaid,
26 addressed to the Party to whom such notice is to be given as hereinafter provided.

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ICAPCD
Imperial County Air Pollution
Control District
ATTN: Chairman of the District Board
940 W. Main Street, Suite 209
El Centro, CA 92243

NATURAL RESOURCES AGENCY
California Natural Resources Agency
ATTN: Arturo Delgado
78078 Country Club Drive, Suite 109
Bermuda Dunes, CA 92203

G. SIGNATURES.

Each individual executing this MOU represents and warrants that:

1. He/She is duly authorized to execute and deliver this MOU on behalf of its respective Party;
and
2. Such execution and delivery is in accordance with the terms of the Articles of Incorporation, bylaws, resolutions, and/or applicable regulations or laws for said Party.

IN WITNESS WHEREOF, the Parties have hereby executed this MOU in _____,
California located within the County of Imperial, on the day and year first above written.

[Signatures on Following Page]

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**IMPERIAL COUNTY AIR
POLLUTION CONTROL DISTRICT**

NATURAL RESOURCES AGENCY

By: 
LUIS A. PLANCARTE, Chairman
District Board

By: Arturo Delgado
ARTURO DELGADO, Assistant Secretary of
Salton Sea Policy
California Natural Resources Agency

ATTEST:

By: 
Blanca Acosta, Clerk of the Board,
County of Imperial, State of California

APPROVED AS TO FORM:

By: 
Adam G. Crook,
County Counsel