DRAFT MEMORANDUM OF UNDERSTANDING

Desert Shores Channel Restoration Project

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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C. **AUTHORITY.**

1. CNRA is entering this MOU pursuant to the Salton Sea Restoration Act, Fish & Game Code section 2930 *et seq.*

2. ICAPCD is entering this MOU pursuant to section 40701 of the California Health and Safety Code.

D. **OBJECTIVES.**

The Parties affirm their intent to undertake the following objectives:

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

   a. CNRA intends to be responsible for the analysis and documentation of the Project’s public benefits and intends to complete such analysis and documentation through the National Environmental Policy Act (“NEPA”) compliance process, as discussed in Section D(2) below.

   b. ICAPCD intends to provide CNRA with supplemental information relating to the Project upon CNRA’s request, including but not limited to air quality data and Project cost and design elements.

   c. The Parties acknowledge that CNRA cannot fund the Project if it does not provide a documented public benefit consistent with the goals of the SSMP.

      i. If CNRA determines that the Project is not eligible for funding under the SSMP, CNRA intends to assist the ICAPCD in identifying potential alternative funding sources, if the ICAPCD so requests.

2. **NEPA Compliance.** CNRA intends to include the Project in its programmatic NEPA document. Inclusion of the Project in CNRA’s programmatic NEPA document is intended to provide analysis and documentation of the Project’s potential air quality and habitat benefits and allow an opportunity for public input on the Project. Completion of NEPA compliance by
CNRA is also intended to allow the ICAPCD to seek federal permits required for future Project implementation. CNRA intends to provide ICAPCD with two weeks advanced notice of public meetings regarding the NEPA process.

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

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

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

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

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

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

      i. The Project will be incorporated into CNRA’s programmatic NEPA document.

      ii. The NEPA analysis will be used to determine the Project’s public benefits.

      iii. CNRA intends to release the project description for public comment in the summer of 2020.

      iv. Analysis of Project effects and development of details in the NEPA process will be occur over four (4) to six (6) months.

      v. CNRA anticipates that the draft NEPA document will be released by winter of 2020-2021.

      vi. CNRA anticipates that the NEPA document will be completed by Summer 2021, however final timing will be determined by the NEPA federal lead agency.

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

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

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

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

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

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

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

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

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

F.  NOTICES.

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

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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]
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT

By: LUIS A. PLANCARTE, Chairman
District Board

NATURAL RESOURCES AGENCY

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