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June 28, 2013

Mr. Terrance J. Fulp, Ph.D.
Regional Director
United States Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Colorado 89006-1470

Dear Dr. Fulp:

Subject: IID's Set of Actions for Contributing 46,546 acre-feet of Colorado River Water to the Colorado River System

I am in receipt of the letter from you on behalf of the Bureau of Reclamation, dated May 3, 2013, requesting the Imperial Irrigation District's set of actions and corresponding timeline to offset the 46,546 acre-feet of Colorado River water delivered as early mitigation water to the Salton Sea in 2010. As you know, IID delivered this volume of water from its 2010 consumptive use entitlement for temporary storage to meet its Salton Sea mitigation requirements in 2011 and the first half of 2012 and, among other reasons, to serve as a cost-savings mechanism to the Joint Powers Authority under the Quantification Settlement Agreement.

IID believed in 2010 and continues to believe that its pre-delivery of mitigation water to the Salton Sea in 2010 was a necessary, appropriate and lawful exercise of its Colorado River water entitlement. Reclamation has a differing perspective and has made this clear in correspondence to IID. Setting aside this fundamental disagreement for the time being, this letter responds to Reclamation's request and addresses how, when and under what conditions IID will contribute this volume of water to the Colorado River system, while also providing other salient facts that we believe are relevant to this matter.

At the outset, I want to emphasize that IID would not knowingly initiate an action that would tip the river system into a shortage earlier than might otherwise occur. The 2010 early Salton Sea delivery was intended to bolster the QSA and related agreements during a period of acute legal and financial uncertainty.

IID had hoped that, with the approval and implementation of the QSA in 2003, the beneficiaries of this QSA would bring a new focus and level of attention to the Salton Sea. Unfortunately this was not and has not been the case. No other water contractor or agency has stepped forward with a proactive initiative to resolve longer-term Salton Sea restoration deficiencies and potential mitigation funding shortfalls, nor has there been an identified viable alternative for addressing these issues. As you are more than aware, the Salton Sea serves not only as the terminus of IID's irrigation and drainage system, but has evolved into a critical avian habitat and flyway stopover. A hundred years in the making, the Salton Sea is now at a critical point in its evolution due to its ever-increasing salinity levels and declining inflows. It is clear to IID that the long-term wellbeing of the Salton Sea and its surrounding communities is not only the linchpin of IID's water conservation and transfer programs, but the litmus test by which the longevity of the QSA must be measured. You should know that IID intends to do what it believes to be necessary, appropriate and lawful to not only protect the health of the Salton Sea and the region, but to safeguard the district's senior water rights.

At the same time, IID is part of the community of Colorado River water users and is cognizant of current hydrologic conditions and reservoir elevations. For this reason, IID intends to work with its transfer partners and Reclamation to continue to promote, as stated in your May 3, 2013 letter, "prudent water management and continued viability of the QSA and the CRWDA."

Your letter is premised on Reclamation's belief that the 2010 pre-delivery of mitigation water to the Salton Sea "did not *appear* to fit into the existing legal framework applicable to deliveries of Colorado River water." (Emphasis added.) For its part, IID disagrees with this view and has consistently pointed to the legal underpinnings on which it based its action.¹ Even so, these differences in legal positions cannot be allowed to stand in the way of progress in ameliorating the potential shortage facing the Colorado River. The importance of moving forward in these times of extreme drought necessitates setting aside legal differences for another day. Reclamation Commissioner Mike Conner succinctly captured this viewpoint in his November 13, 2012 letter that concludes, "In this regard, Reclamation and IID will simply have to agree to disagree."

¹ See previous IID letters to Reclamation dated September 20, 2010, October 5, 2010, January 20, 2011, and November 7, 2012.

To this end, IID will offset its 2010 pre-delivery of 46,546 acre-feet to the Salton Sea by fallowing agricultural lands to generate this conserved water. However, due to the additional mitigation requirements necessary to meet the "bucket-for-bucket" Salton Sea mitigation obligation required by the California State Water Resources Control Board, IID must fallow for more than the 46,546 acre-feet amount of water. IID must create a total of 69,818 acre-feet of fallowed water in order to offset the 46,546 acre-feet of water pre-delivered in 2010 and to provide for another 23,272 acre-feet of conserved water. This additional 23,272 acre-feet of conserved water is required to be delivered to the Salton Sea for mitigation of the impacts to the Salton Sea due to the fallowing for the 46,546 acre-feet of water pre-delivered in 2010.

Given that IID has already completed its 2013 contracting process for its 2013-2014 fallowing program (recall that IID's fallowing programs typically run July 1 of one year through June 30 of the next year to coincide with crop leases and local farming practices), and taking into account IID's 210,448 acre-feet payback balance obligations and its 417,000 acre-feet of additional conservation obligations in 2013 and 2014, the district proposes a two-year window (2015-2016) to complete this supplemental conservation and delivery by splitting the fallowing and mitigation delivery obligations proportionately over these two years, such that the set of actions described above would be completed no later than December 31, 2016.

IID's willingness to voluntarily implement this set of actions is, however, firmly grounded in two fundamental pre-conditions: (1) Reclamation must acknowledge that while it may disagree, IID continues to maintain its legal position that the 2010 pre-delivery was necessary, appropriate and lawful, *and* (2) Reclamation must agree that IID's implementation of this set of actions is not a concession by IID that the pre-delivery was inconsistent with the existing legal framework applicable to deliveries of Colorado River water.

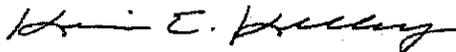
In summary, it is IID's perspective and legal position that the 2010 pre-delivery of Salton Sea mitigation water was necessary, appropriate and lawful and that the set of actions and timeline above are part of an effort by IID to be a cooperative Colorado River water user and to properly manage its water resources during an unprecedented drought. By implementing actions intended to slow the decline of reservoir elevations and system storage, IID intends to do its part to forestall forecasted shortage determinations while the reservoir storage volumes have time to recover. In turn, IID is hopeful that this set of actions will open the door to additional dialogue with Reclamation and the community of Colorado River water users regarding the critical importance of the Salton Sea to not only our local communities, but to the basin-wide interests benefiting from and concerned with the long-term viability of the CRWDA and the QSA.

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IID is confident that the conservation methodology and schedule outlined above satisfies Reclamation's request for a "credible set of actions and a definitive timeline." IID intends to work with Reclamation as it moves forward to determine specific calendar year schedules and consumptive use reductions to include in its annual water orders. IID also commits to consulting with Reclamation and neighboring Lower Basin representatives to monitor reservoir operating conditions, and will consider modifications to this schedule should hydrologic conditions indicate that an acceleration would preempt a shortage determination and, as such, warrant additional consideration. Moreover, although IID's conservation and payback requirements for 2013 and 2014 are substantial, such that excess conservation is unlikely, as upcoming fallowing program contracts are finalized IID will consider, at its own discretion, applying a portion of any excess fallowed water toward the 69,818 acre-feet of supplemental fallowing needed to offset the 2010 Salton Sea mitigation water pre-delivery.

In my view, IID's pre-delivery of mitigation water to the Salton Sea in 2010 has become a needless distraction from the very real problems we now confront with respect to the current hydrology, Colorado River operations and management, the future of the Salton Sea and the durability of the CRWDA and the QSA. I believe that by implementing additional fallowing within IID in 2015 and 2016, we may best move forward to address these challenges in a collaborative manner. I look forward to your response and to centering future discussions on issues of critical importance to advancing the common interests of our agencies.

Sincerely,



Kevin E. Kelley
General Manager