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THOMAS S. VIRSIK

**VIA ONLINE FILING and OVERNIGHT DELIVERY**

October 17, 2011

Ms. Lanika Cervantes, Corp. Project Manager  
US Army Corps of Engineers  
Los Angeles District  
Regulatory Division, San Diego Field Office  
ATTN: CESPL-RG-RS-2010-00142-LLC  
6010 Hidden Valley Road, Suite 105  
Carlsbad, CA 92011

Mr. David Elms, CDFG Project Manager  
California Department of Fish and Game  
78078 Country Club Drive, Suite 109  
Bermuda Dunes, CA 92203

Re: Draft Salton Sea Species Conservation Habitat (SCH) Project  
Environmental Impact Statement/Environmental Impact Report (EIS/EIR)  
Public Notice/Application No.: SPL-2010-00142-LLC  
State Clearinghouse No. 2010061062

Dear Ms. Cervantes and Mr. Elms:

For Online Filing: Due to the number of attachments to our comment (11), we will be submitting this comment with 5 attachments and two additional emails with the remainder of our attachments. For ease of reference, we are also sending via overnight delivery a CD with both the comments and all attachments.

The SCH Project has a twofold purpose:

1. Develop a range of aquatic habitats that will support fish and wildlife species dependent on the Salton Sea.
2. Develop and define information needed to successfully manage the SCH Project habitat through an adaptive management process.

In essence the project has introduced a "proof of concept" and contemplates that this process will go on for ten years to determine if the Project protects the aquatic habitat. However, the

Draft EIR is missing material factual discussions and relies on information that may be incorrect. Please find attached to this letter the following documents that appear to be missing from the Draft EIR:

A. Correspondence with the SWRCB concerning Statements of Water Diversion and Use for Colorado River diversions germane to the water source for the Project. These statements notify the world of claims to water that may flow into the Salton Sea, which claims would be superior to any claims of third parties to the water. As the correspondence illustrates, these statements substantially predate the present Draft EIR. Attachment 1 includes:

1. Summary of Water Diversion Statement Filings
2. May 12, 2006 Osias letter to Whitney
3. May 16, 2006 Maloney letter to Whitney
4. August 30, 2006 Maloney letter to Grober
5. April 22, 2010 Virsik letter to Whitney
6. June 16, 2010 Virsik letter to Whitney
7. July 21, 2011 Virsik letter to Hoppin
8. September 22, 2011 Virsik letter to Evoy

B. The Draft EIR relied in large part on a PEIR for a project that has not been approved by the Legislature of the State of California. (Final Programmatic Environmental Impact Report (Final PEIR) and Salton Sea Ecosystem Restoration Study 2007.) Since the Legislature has never approved any project, the time in which to challenge the PEIR has not lapsed. Public Resources Code §§ 21108, 21152, and 21167. The present Draft EIR is therefore relying on a PEIR that is untested and still subject to revision or invalidity. In addition, there are fundamental flaws with that PEIR and we have attached our comment at Chapter 8, page 137, #IG-16 (included in Attachment 1).

C. Briefs filed by the County of Imperial and others in the QSA Litigation. QSA Coordinated Civil Cases, C064293, California Court of Appeal, Third Appellate District. These briefs more thoroughly describe the issues that remain pending before the Court of Appeal. The case is scheduled for oral argument on November 21, 2011. The QSA trial court decision and the issues raised in these briefs raise questions about many of the factual assumptions on which the Draft EIR is based. Until there is resolution of these issues it makes no sense to go forward with a proposed Project. Pointedly, the PEIR recognized as much: "The discussion of Salton Sea restoration cannot take place without recognizing the Quantification Settlement Agreement (QSA) signed in 2003." Appendix H Ecosystem Restoration Study 2006, Salton Sea Ecosystem Restoration Program, p. H-1. The attached briefs include:

1. Morgan-Holtz Parties - Ronald Leimgruber and Larry Porter's Brief
2. Imperial County Air Pollution Control District's Opening Brief.
3. County of Imperial's Opening Brief
4. POWER's Opening Brief
5. Imperial County Air Pollution Control District's Reply Brief
6. County of Imperial Reply Brief
7. County of Imperial and Imperial County Air Pollution Control District's Brief in Response to Amici Curiae of Audubon California, et al.

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8. Cuatro Del Mar's Combined Answer to Amicus Brief of Planning and Conservation League, et al.

D. Two 2011 Resolutions from the Imperial irrigation District that raises issue about the flow into the Salton Sea. Attachments include:

1. IID Resolution 3-2011
2. IID Resolution 27-2011

After one understands and redoes the Draft EIR based on the aforementioned documents there will still be two basic problems with the Draft EIR:

A. The EIR drafters have not examined other projects around the country and the world to determine if it is necessary to spend ten years examining the "proof of concept." The EIR drafters are assuming that they have to re-invent the wheel.

B. The Drafters failed to consider the value of lands for agricultural purposes that would be created from the reduction of flows. Instead, the drafters assume without analysis that the "proof of concept" Project must be placed only on the sites analyzed.

Sincerely yours,

/S/

Patrick J. Maloney

Encl.

c. Chairman Hoppin, SWRCB