

## EXHIBIT E

### THE IMPERIAL GROUP

RE: SALTON SEA RESTORATION DEIR --  
WATER RIGHTS/SUPPLY and QSA LITIGATION

DATE: January 16, 2007

In 2004, well before the DPEIR was commenced, the Imperial Group and the State, through counsel, agreed to cooperate in any discussion about Salton Sea restoration. That agreement was memorialized. See the Non-Admissibility Agreement. While the agreement did not and cannot change CEQA, it allowed for an exchange of information and discussions free of collateral litigation issues. While the Imperial Group took advantage of the negotiated agreement by proposing what is currently Alternative 4, that is by no means the only discussion or transmittal of information provided. The Imperial Group provided other substantial input and documents – some of which is detailed below – for use in the DEIR, yet none was included. See April 15, 2004 letter to Charles Keene and the February 9, 2005 January 30, 2006, March 9, 2006, March 23, 2006 and May 19, 2006, May 31, 2006, June 20, 2006, July 26, 2006 and August 30, 2006 letters to Secretary Chrisman. Most glaringly, as discussed below, any mention of the Statements of Water Diversion are absent from the DPEIR.

#### **5-2 Water Rights**

The DPEIR discussed the application filed by the Metropolitan Water District of Southern California (MWD) to appropriate water from the New and Alamo Rivers filed with the State Water Resources Control Board (SWRCB). The DEIR summarizes the contents of the administrative file at the SWRCB. The discussion concludes with the statement that the application “is being reviewed by the SWRCB.”

A number of landowners and water users in the Imperial Valley have availed themselves of Water Code section 1011 et seq and filed Statements of Water Diversion with the SWRCB, but those are not noted in any fashion in the DPEIR. There are at present over 360 such Statements, all of which recite the right to reduce water use and the areas in which such reduced use may then be applied, as allowed under the Water Code and SWRCB Order 2002-13. Copies of the Statements were provided to the DWR for inclusion in the DEIR and/or analysis on May 31, 2006. The statements have not been rejected, although IID suggested that they be. See David Osias’ letter of May 12, 2006 and our reply of May 16, 2006. Yet no mention is made of the Statements although they are procedurally in the same or a further posture as the MWD applications discussed at 5-2, since the filing of statements requires no public hearings, unlike the MWD applications.

If only one Statement had been filed then perhaps a cursory discussion finding that the exercise of rights under sections 1011 in such a limited fashion would have a de minimis affect on inflows might suffice. But the cumulative affect of sections 1011 et seq. by

approximately 44,447 acres representing hundreds of Statements filed is a gross omission. The public should not be caught unawares about the Statements, in the same way the public should be (and has been) informed of the MWD applications that may or may not affect New and Alamo River flows into the Sea.

#### **QSA LAWSUIT V. AAC LAWSUIT**

The DPEIR at Section 5 discusses the federal lawsuit that seeks additional environmental review of the All American Canal Lining project. (AAC) The federal AAC suit is only tangentially related to the Salton Sea in that if the canal is lined, some portion of the water that would have been lost to seepage into Mexico that returns as flow through the New and/or Alamo Rivers would cease. The DPEIR does not discuss, however, the Quantification Settlement Agreement (QSA) coordinated litigation currently pending in the Sacramento County Superior Court. Coordination Proceedings, QSA Cases, Superior Court of the State of California, County of Sacramento, JCCP No. 4353.

Unlike the AAC suit, the QSA Cases may have a direct impact on the restoration project. For example, some or all of the QSA agreements may be found invalid, which could prevent the transfer of the mitigation and/or restoration increments of water to the Sea (and the financial contributions attributable to those increments). The two extreme possible outcomes – full validation or full invalidation of the QSA agreements – could radically alter which project is feasible both from a water inflow and financing standpoint. The “full validation” outcome would result in the status quo upon which the DPEIR is based (subject to the modifications and corrections elsewhere detailed). A “full validation” outcome could possibly result in the abolition of all private water rights in the Imperial Valley for Colorado River water. If such an outcome were reached, then the State could by legislative fiat amend the laws applicable to IID and thereby dedicate the water to a public use outside of the Imperial Valley, thus resulting in no water being available to the Sea.

The “full invalidation” outcome would make the inflow of water and public monies shrink radically. Both extreme outcomes as well as more moderate ones should be factored into what Alternative would be best able to respond to change. Ignoring the QSA Cases assists neither the public nor the ultimate decision makers with weighing the relative merits of the Alternatives.