

Jim Hanks - IID Director Comments - 02/05/2018

Thank you everyone for attending today and those who are watching up and down the Colorado River and beyond. I want to share with you two critically important updates as they relate to the Drought Contingency Plan, those being federal Salton Sea commitments and the Commissioner's recent actions. I also want to begin by underscoring that for IID, the DCP is not just about water quantity, *but air quality*.

The Salton Sea is not only the largest lake in California, it's also the the largest lake in the entire Colorado River basin covering seven states in the United States and two in Mexico. The Salton Sea is an integral part of the Colorado River system. Any action taken to resolve the situation at Lake Mead cannot be allowed to worsen the international environmental crisis at the Salton Sea. Imperial County already has the highest asthma rate in California, and we experience twice the state hospitalization rate for childhood asthma. We find ourselves at critical point regarding public health, as epidemic levels of respiratory illness will only become inflamed by the growing dust bowl of toxic emissions blown from the shrinking Salton Sea's growing shoreline.

Just within the last few weeks, we witnessed another devastating die off of thousands of rare and migratory birds at the Salton Sea due to avian cholera, the direct effect of shrinking habitat and worsening water quality at this global wildlife refuge. The Salton Sea has taken the biggest impact of water transfers that were designed to enable California to live within its means. As a result, the water that once fed and sustained the Salton Sea protecting the environment, endangered and threatened species, and public health has instead been repurposed for unsustainable urban growth as the Sea has rapidly deteriorated.

From the Colorado River Compact, to the Boulder Canyon Project Act, to the QSA; the Imperial Irrigation District has stood ready and willing to cooperate and

contribute for the good of the Colorado River system as whole. However, cooperation and contribution cannot continue to be a one way street.

IID has worked to be a good neighbor on the river. Yet, a sustainable solution to declining flows cannot and will not be attained at the continuous and severe expense of the the Imperial Valley and the Salton Sea, while other agencies intend to grow their supply off of a shrinking stream. Since 1990, IID has forgone over 7 million acre-feet of Imperial Valley's Colorado River entitlement through transfers of conserved water. This level of sacrifice is unparalleled on the entire River. If this seven million acre-feet of water had been stored behind the Hoover Dam at Lake Mead for the long-term, rather than transferred for short-term urban consumption, the current and potentially worsening elevation crisis at the Dam would have been averted. To put this in perspective, had this tremendous amount of water instead been left in Lake Mead, it would have increased the water storage capacity by as much as 70 percent and raised the surface elevation a staggering 70 feet to the approximate elevation of Lake Mead in 2003.

No other entity on the River in this DCP process even begins to approach the scale of IID's past and ongoing contributions. These 7 million acre-feet could have sustained the Salton Sea or been used to build elevation at Lake Mead. Sadly, these transfers have supported unsustainable, profit-motivated *Cadillac Desert* growth instead. Success can only be achieved through mutual cooperation, not to the persistent detriment of the Imperial Valley and the Salton Sea as urban water users expect to unsustainably sprawl and develop additional demand off of declining river supply. IID is committed to cooperation and adaptation. We will neither tolerate attempts at renegotiation or dismissal of longstanding agreements and law, nor illegal federal force. As we enter an Era of Limitations, other water users must learn to cooperate, adapt, and live within their means.

That's why this Board conditioned IID's full participation in the DCP upon the federal and state governments honoring decades worth of broken promises at the Salton Sea. Sadly, Commissioner Burman responded at the Caesar's Palace ballroom in Las Vegas stating, "I would caution folks ... not to add unrealistic demands." IID maintains that clean air and clean water for Imperial Valley residents and our environment are not unrealistic demands.

While Commissioner Burman has repeatedly declined to participate in solutions for the Salton Sea, our own Senator Dianne Feinstein has demonstrated impressive leadership that will deliver breakthrough solutions for the Salton Sea. On January 31st, Senator Feinstein called on the Trump administration to quickly implement Salton Sea provisions she secured in the Farm Bill to protect the Salton Sea. When these funds are distributed, they will be put to use on real, on the ground projects to protect public health, the environment, wildlife, and farms thereby satisfying IID's condition for full DCP participation. As a former principal and superintendent for underprivileged school children surrounding the Salton Sea, an IID Director, and most importantly as a grandparent, I want to thank Senator Feinstein for her service and leadership for the Salton Sea to protect our Valley and our children.

In complicated Colorado River water issues, cooperation is key and patience is a virtue. No federal coercion was necessary to reach this point of near completion after years of patient work, and we certainly do not need it now. Unfortunately, we have witnessed both impatience and a lack of cooperation from the Bureau of Reclamation. Despite the significant strides made by the State of Arizona in addition to Senator Feinstein's efforts to secure funding for the Salton Sea which will effectively satisfy IID's key condition for full participation, Commissioner Burman decided to wait not even 24 hours before announcing immediate federal action on the river alleging that neither

Arizona nor California had met the arbitrary deadline spontaneously announced just one month prior.

Further, when asked repeatedly by reporters about the Salton Sea, Commissioner Burman repeatedly dodged the questions about rapid elevation declines at the Salton Sea due to QSA agreements, the beginning of severe public health effects, and the total loss of the fish population, preferring to comment instead, “We will continue to be a partner. We’ve been a strong partner.” Commissioner Burman continued, “Standing by and watching Lake Powell and Lake Mead decline to seriously low levels is not an option.” Should not the same also be said about the Salton Sea? Why are declines at Lakes Powell and Mead of more importance to the Commissioner than even worse declines at the Salton Sea? Why is prompt action so necessary at one lake while another is ignored? Are the golf courses of Phoenix, the fountains of Las Vegas, and the lawns of Los Angeles a greater priority to the Commissioner than the international environmental crisis unfolding at the Salton Sea?

I will be frank and outline what our job is here at IID, and what Commissioner Burman’s job is at the Bureau of Reclamation. As IID Directors, we are elected by the people of Imperial Valley. These are the people who live, breathe, work, and farm here. We are responsible not only for delivering water, but standing up for the Salton Sea. If we don’t, who will? Certainly not Commissioner Burman. Had we agreed to the DCP unconditionally, we would have satisfied the Commissioner. But what would we have told the people of Imperial Valley? That the happiness of an out of touch Washington D.C. bureaucrat mattered more than clean air, crops ruined by toxic dust, an asthma epidemic, and a worsened international environmental crisis in our backyard? We cannot afford to continue to kick the can down the road any longer on the Salton Sea.

This brings me to the role of the Commissioner. We respect the work Commissioner Burman has put in to the DCP process and respect the immense challenge that it presents. But we also ask that she respect our situation as well and the legal limits of her and the Secretary of the Interior's positions. There are two possible paths for a drought on the Colorado River. However, Commissioner Burman has introduced a fictional third. First is the priority system. In a shortage, the priority system determines which states receive cuts and to what extent. However, to avoid shortage scenarios in the first place, the seven basin states came together to form a DCP. By law, you cannot violate priorities, that's why all seven states must approve the DCP. Unfortunately, Commissioner Burman was misguided in her assertion that another "path is looking to the Secretary's broad authority on the Colorado River."

But let's question for a moment what Commissioner Burman implies that this "broad authority" might entail. In this scenario, if the Secretary of the Interior took full arbitrary control of the river, does that eliminate existing ICS incentives and other voluntary agreements that build elevation behind the Dam and hedge against drought? What, if any, voluntary agreements between water users would survive if an unelected administrator was able to assert absolute control of the river? By what authority does this unelected, absolutist River Ruler derive these powers, and to what extent would agreements, federal legislation, and even the Colorado River Compact matter under this riparian regime?

Commissioner Burman implies that the Department of the Interior and the Bureau of Reclamation have unilateral authority to adjust the priority system in times of drought. Neither agency have that power. Far from the Secretary of the Interior or the Bureau Commissioner having any real broad authority over the Colorado River, the United States Supreme Court in *Bryant v. Yellen* admonished the Secretary that his

powers on Colorado River matters, especially as related to present perfected water rights, are defined and narrowly limited in scope. To put it plainly, the DCP process is the voluntary alternative to the de facto priority system. The choice is between the automatic priority system and voluntary DCP participation, not DCP participation and a mythical federal dictatorship over a shrinking stream. Any federal attempt to readjust priority rights without the voluntary support of water users violates the Colorado River Compact, existing federal legislation, and constitutes an unlawful taking of water. For the Secretary or the Commissioner to take such actions would utterly disregard the Supreme Court's admonition of the Secretary and protections for present perfected rights, and dangerously approach a taking of State water rights.

If Commissioner Burman wants to shut down the DCP process after years of work at the 11th hour, that is her prerogative. But let's be clear about what that would become-- the Burman DCP Shutdown. Shutdowns do not work. It is the Commissioner's choice if she wants to help us and this dying Sea across the finish line, or if it the interest of the Bureau to erode public trust and undermine years worth of efforts that seven American states and two states in Mexico have volunteered.

To echo the sequel of the Commissioner's "close is not done" mantra, it's time to get the job done. Though IID has done more than anyone else to support the river system over the past century, and especially the last thirty years, IID is willing to contribute further to avoid a shortage on the Colorado River and the risks of deadpool at the Hoover Dam. IID already passed the DCP in December, its full implementation is suspended until three reasonable conditions are met given the severity of the situation at the Salton Sea and the scale of our existing contributions.

At this time, the Feds are not waiting on IID. IID is waiting on the Feds. We urge Commissioner Burman to honor her claim that the Bureau will "continue to be a

partner” and that it has “been a strong partner.” Commissioner Burman, we invite you to be part of the solution for the Salton Sea, not part of the problem. We can all agree on three things. That the Salton Sea is an integral part of the Colorado River system. That cooperation is more effective than conflict. That your leadership, Commissioner Burman, will help deliver solutions for the Salton Sea by meeting our condition for full participation in a smart and effective DCP.

So how do we untangle this mess? Well, there’s an obvious solution. Work to deliver the funding already allocated in the Farm Bill for the Salton Sea. Don’t throw up barriers and issue vague threats to shut down the DCP process with illegal federal overreach. Work with us to address the Salton Sea as a central element of the DCP and future Colorado River discussions and the process will be complete. Be a partner for solutions, not an opponent. Thank you.