REPORT

TO: Energy and Environment Committee (EEC) and Regional Council (RC)

FROM: Molly Hoffman, Senior Regional Planner, Aviation and Environmental Planning, 213-236-1804, hoffman@scag.ca.gov

DATE: **December 4, 2003**

SUBJECT: **Support for Imperial County regarding Ninth US Circuit Court of Appeals Ruling (reclassification to a "serious" PM10 nonattainment area)**

EXECUTIVE DIRECTOR APPROVAL

Recommended Action:

Approve Staff Recommendations

Summary:

On October 9, 2003 the 9th U.S. Circuit Court of Appeals ruled that the U.S. EPA had erred in its finding that Imperial County would attain the PM10 standards "but for emissions emanating outside of the U.S" and reclassified Imperial County as a "serious" nonattainment area, a more severe designation than its current status as a "moderate" PM10 nonattainment area.

The Imperial County Air Pollution Control District (ICAPCD) had submitted an attainment demonstration, based on the Clean Air Act (CAA), Section 179(b) clause, arguing that the County met the National Ambient Air Quality Standards (NAAQS) for PM10, "but for" the cross-border emissions emanating from the Mexicali Valley, Mexico. The U.S. EPA had accepted this demonstration, but the finding was challenged in a lawsuit by the Sierra Club.

The three judge panel of the 9th Circuit Court rejected the conclusion that Mexico was partly to blame for the regions failure to comply with PM10 National Ambient Air Quality Standard (NAAQS). In that decision the panel wrote that "based on the data and the reports in the record there is simply no possibility that Mexican transport could have caused the observed PM10 exceedances." This ruling will require the agency to enact more stringent pollution control requirements for industry, agriculture and other pollution sources.

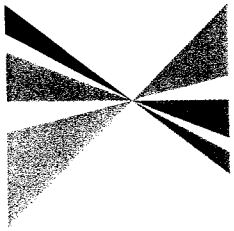
Geographically, Imperial County is complex, dust-prone area. It is an arid region, where large expanses of sandy or loamy sediments are unvegetated and exposed to severe and ongoing wind erosion. The political economy of the County is agricultural and rural, lacking a diverse and robust economic base, which adds to the difficulties it faces in controlling PM10 emissions. Customary controls driven by air quality concerns may have rapid and detrimental impacts on the area's ability to support itself and its population.

Staff recommends the Energy and Environment Committee (EEC) and the Regional Council (RC) submit the attached letter to U.S. EPA Region 9, supporting an air quality partnership between SCAG, Imperial County, USEPA and CARB to identify and implement solutions to the unique constraints faced by Imperial County.

Fiscal Impact:

Approval of these staff recommendations will not have a fiscal impact on SCAG. Staff work involved with this task is allocated in the FY03/04 budget.

SOUTHERN CALIFORNIA



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November 20, 2003

Debbie Jordan
Director, Air Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

Subject: Renegotiating the PM-10 Non-attainment Status for Imperial County, California

Dear Ms. Jordan,

As you may be aware, there has been some controversy regarding the particulate matter (PM-10) status of the Imperial County portion of the Salton Sea Air Basin, currently classified as a "moderate" non-attainment area. The Imperial County Air Pollution Control District (ICAPCD) had submitted an attainment demonstration, based on the Clean Air Act (CAA), Section 179(b) clause, arguing that the County met the National Ambient Air Quality Standards (NAAQS) for PM-10, "but for" the cross-border emissions emanating from the Mexicali Valley, Mexico. The U.S. EPA had accepted this demonstration, but the finding was challenged in a lawsuit by the Sierra Club.

In a most recent opinion, the United States Court of Appeals for the Ninth Circuit Court (No. 01-71902, filed October 9, 2003) granted the petition, and ordered that U.S. EPA classify Imperial Valley as a "serious" non-attainment area, a more severe designation than its current status as a "moderate" non-attainment area. Imperial County has stated its intention to appeal the ruling, and has requested that U.S. EPA join in this appeal.

The Southern California Association of Governments (SCAG) appreciates the basis for the concerns expressed by Imperial County, in regard to its pending designation as a "severe" non-attainment area for PM-10. While we maintain a strong commitment toward the speedy implementation of regional plans and programs aimed at the timely attainment of the NAAQS, and while assuring Federal agencies of our dedication to maintaining conformity with our various transportation and air quality plans, we would like to take this opportunity to make the case that the situation in Imperial County is unique. The very particular ecological and economic circumstances of the area warrant the need to find innovative, "outside the box" solutions.

Geographically, Imperial County is part of the Colorado Desert and contains the Salton Sea area, making it an ecologically complex, geologically dust-prone area. It is an arid region, where large expanses of sandy or loamy sediments are unvegetated and exposed to severe and ongoing wind erosion. The political economy of the County is agricultural and rural, lacking a diverse and robust economic base, which adds to the difficulties it faces in controlling PM-10 emissions. Customary controls driven by air quality concerns may have rapid and detrimental impacts on the area's ability to support itself and its population.

The County's 140,000 citizens, inhabiting its 4,500 square mile area, are entitled to timely access to healthful air. However, the Imperial County Air Pollution Control District may have no reasonably implementable strategies in light of the ecological and economic constraints outlined above and in conjunction with the reality that considerable portions of the PM-10 emissions experienced by Imperial County do emanate from Mexico.

SCAG suggests that an air quality partnership between Federal, State, regional and local agencies be forged, to identify and implement innovative solutions to the unique constraints faced by Imperial County. SCAG offers to assist in such a partnership in any way feasible.

SCAG is the designated Metropolitan Planning Organization for the six-county Southern California region, encompassing Imperial, Los Angeles, Riverside, San Bernardino, Orange and Ventura Counties. With a population of some 17 million, an area of 38,000 square miles, Southern California has been characterized as the 12th largest economy in the world. SCAG is mandated by the federal government to research and proposed plans for transportation, growth management, hazardous waste management, and air quality, amongst other concerns.

We look forward to hearing from you in this regard. Please feel free to contact Mr. Mark Pisano, Executive Director, or myself, with any questions or concerns you might have.

Sincerely,

Bev Perry
Mayor, Brea
President, SCAG