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(11/15/16) Board Meeting-Item 7
Salton Sea Management Program
Deadline: 11/10/16 by 12:00 noon

November 10, 2016

11-10-16
SWRCB Clerk

VIA ELECTRONIC MAIL
commentletters@waterboards.ca.gov

Felicia Marcus
Chair, State Water Resources Control Board
1001 "I" Street
Sacramento, California 95814

Re: Comment Letter – Salton Sea

Dear Chair Marcus:

Imperial Irrigation District (IID) is pleased to submit the enclosed comments for consideration by the State Water Resources Control Board during next Tuesday's workshop on the Salton Sea.

Specifically, IID is requesting that the State Water Resources Control Board adopt or cause the California Natural Resources Agency to adopt a 10-year Roadmap for the Salton Sea's restoration no later than December 31, 2016. The failure to adopt such a Roadmap would, in IID's view, represent the State of California's failure to meet its commitments to the people of the Salton Sea region, in violation not only of California law but also the recent Memorandum of Understanding between the United States Department of the Interior and the California Natural Resources Agency.

IID looks forward to sharing its views on this important matter with you and your colleagues next Tuesday.

Very truly yours,

Kevin Kelley
General Manager

STATE WATER RESOURCES CONTROL BOARD
PUBLIC WORKSHOP REGARDING THE STATUS OF THE SALTON SEA
TUESDAY, NOVEMBER 15, 2016, 11 A.M.

THIS BOARD MUST TAKE IMMEDIATE ACTION TO REQUIRE A ROADMAP FOR A SMALLER BUT SUSTAINABLE SALTON SEA

A Call to Action

The Notice of Public Workshop provided a useful history of the process proposed for implementing a concrete program for restoration of the Salton Sea. It went on to note that over a year ago the Salton Sea Task Force adopted principles for a successful Salton Sea Management Program. The Notice also correctly described that this Board is mandated by the Task Force directive and by its Revised Order WRO 2002-0013 to monitor and assess progress being made toward restoration. As discussed more fully below, the Task Force has moved little beyond these general principles. The Task Force has not outlined goals and objectives with metrics and deadlines to accomplish restoration, despite the requests of many parties during this Board's workshops. The Task Force has not established priorities among the goals, the most important of which is the protection of the public health of those near the Salton Sea. This failure to move forward quickly in a concrete way is no longer just an abstract concern calling out for more study. This failure threatens the health of the people living near the Salton Sea. It threatens the habitats of countless species. If continued, it will make it impossible for the Imperial Irrigation District to participate in a lower Colorado River drought program and this failure threatens the viability of the Quantification Settlement Agreement (QSA) itself.

A. There is Insufficient Concrete Progress Toward Restoration of the Salton Sea.

As IID emphasized in its presentation before the SWRCB in January of this year, it is imperative that the Board take immediate and definitive action before the end of 2016 to adopt a 10-year Roadmap for Salton Sea restoration that will hold the State accountable in meeting its Salton Sea obligations. There currently is no plan with goals and objectives, with enforceable metrics and with actionable timelines. These are required because already the Task Force's actions are not keeping pace with the rate of expansion of playa exposure. And, most certainly, the Task Force will not be able to keep pace with the exponentially increasing rate of playa exposure starting at the beginning of 2017. Indeed, if there is no concrete program in place at the start of 2017, the Board, the IID and the State of California will find themselves facing a 150,000-acre-foot shortfall in mitigation water to the Sea. This is not a surprise—it is specified in this Board's Order and required by the QSA. There will be no action plan containing compensating measures to avoid the environmental and public health consequences that will begin to spiral out of control in 2018.

SWRCB's 2002 Order allowing the proposed QSA water transfers to proceed without unreasonable impacts presupposes and requires State implementation of Salton Sea restoration. It relies on the 15-year mitigation water delivery period to hold the line against degradation while the restoration plan is developed. That 15-year period will expire next year, but there is still no concrete plan for restoration. The QSA was expressly conditioned on the development of such restoration plan during this period. It has not happened and the inevitable health risks are now about to occur. The condition of 15 years of mitigation water contributions to the Sea was straightforward. All knew that the transfers would cause significant harm to air quality and habitat, the contributions would Serve to stabilize regional environmental and air quality conditions for a long enough period for the State to study the feasibility of long-term restoration actions, develop a plan for restoration and begin implementation of the restoration plan. That did not happen during the 15 years, it still has not happened, and the rate of playa exposure has far outstripped the recent attempts to start a program of restoration. Damage is occurring daily and will increase exponentially. There simply is no tenable alternative to fulfilment of the State's obligation. There is no time to look in vain for a less expensive, less difficult "Plan B".

In developing its 2002 Order approving the transfers, the Board determined two things. First, the QSA transfers are of overriding importance to the State's water supply reliability. However, the transfers could only be permitted and allowance of the transfers be determined as reasonable if the anticipated Salton Sea air quality and habitat impacts and the mitigation measures set forth in the EIRs and ordered by the Board were implemented. The Board intended that those mitigation measures, including the 15-year mitigation water requirement, be crafted to rely on the presumption that the State would begin to restore the Sea within the initial 15-year period. This reliance on action by the State was appropriately based not only on assurances from State officials—as Director Kuhn detailed in the initial Salton Sea Workshop in March 2015—but also on "QSA legislation" (a package of three bills, SB 277, SB 317, and SB 654) in which the California Legislature agreed to assume the costs of Salton Sea restoration and QSA mitigation, except for the first $133 million (2003 dollars) in mitigation costs to be borne by IID, Coachella Valley Water District and San Diego County Water Authority. In SB 277, the Salton Sea Restoration Act, the Legislature declared it to be "the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem." The sponsors of the bill explained that it entailed "a commitment on the part of the State to restore the Salton Sea," and that SB 277 "states that it is the responsibility of the State of California to restore the Salton Sea." The QSA partners directly relied upon these State commitments. In signing the QSA, all of the QSA partners agreed that the transfers were "premised on," among other things, the "continuation of the QSA Legislation in full force and effect without material modification." This Board in granting the transfers relied on this same immutable premise.

In 2013, the Legislature and Administration renewed the State's commitment to Salton Sea restoration by enacting AB 71, which reaffirmed that it remains "the intent of the Legislature" to "[p]ermanently protect fish and wildlife that are dependent on the Salton Sea ecosystem," "[r]estore the long-term stable aquatic and shoreline habitat for fish and wildlife that depend on the Salton Sea," and "[m]inimize noxious odors and other water and air quality problems." AB 71 also provided that the California Natural Resources Agency (CNRA) would lead the Salton Sea restoration efforts. The 2014 California Water Action Plan, as updated in 2016, calls on the

SWRCB to oversee CNRA leadership in the development and implementation of a comprehensive and accelerated response to the air quality and ecological needs at the Sea. Despite these renewed commitments, with the exception of the work performed by IID, there has been virtually no concrete, on-the-ground effort by the State to address the scale of the looming transfer impacts.

Frustrated by the State's sluggish response to the impending crisis at the Sea, the purpose of IID's Petition filed with the Board in November 2014 was to prompt timely Board action requiring the State to fulfill its commitment to restore the Salton Sea as a condition of the QSA transfers. IID filed its Petition three years ahead of the environmental and public health "cliff" looming at the end of 2017, understanding that it could take many months for stakeholders to develop a consensus-based State-led restoration plan and a realistic, viable mechanism to fund it. Tragically, in the intervening 24 months since IID's Petition was filed, though we have witnessed an escalating sense of activity and continual renewing of State verbal commitments, the State has not translated these into immediately implementable plans scaled to keep pace with acknowledged acceleration of impacts in terms of exposed acreage and loss of habitat. Rather, the State's actions since 2014 and this Board's initial 2015 Workshop have been little more than window dressing on continuing State dithering and digressions into "studying" the problem without new or more comprehensive plans or progress.

In October of 2015, the Task Force's "Agency Actions" document called for accelerated planning and permitting and "immediate implementation" of projects responding to air quality and natural resource impacts at the Sea, specifically "staged to address the expected progression of playa exposure," under the oversight of this Board and the California Air Resources Control Board. But instead of prompting immediate implementation, the Task Force's manifesto was followed by 12 months of CNRA "process" and public presentations. Similarly, CNRA's April 2016 AB1095 "shovel-ready" project report issued in response to the AB1095 deadline simply catalogued pre-existing IID and State efforts, such as the previously developed permitted Species Conservation Habitat and Red Hill Bay projects, the Torres-Martinez Wetlands, and IID's Backbone Infrastructure project. As the non-governmental organizations pointed out at this Board's April 2016 Workshop and again before the August 2016 SSMP Update, even these projects touted by CNRA and the Task Force are far too limited to address anticipated transfer impacts, and instead of moving forward even with these, the State seems committed only to re-studying, re-engineering and representing the existing plans and designs, rather than making concrete on-the-ground progress. As recently as last week, CNRA's SSMP presentation consisted of a "plan" allowing available budget to drive Salton Sea restoration, representing not an implementable, serious Roadmap responding to transfer impacts and critical restoration goals with adequate metrics and timelines but a Roadmap for excusing failure by pointing to funding limitations. This "plan" responds to ostensibly ambitious goals, such as construction of an extensive "perimeter" lake, but these goals have not been formulated coherently to efficiently address the anticipated brunt of the transfers' public health impacts, which primarily will consist of rapid southern Sea playa exposure and deteriorating air quality conditions, which must be addressed in concert with available water supply infrastructure and assured deliverable inflows.

At the August 2016 SWRCB meeting, IID informed the Board of an additional element of urgency bearing on the Board's need to take immediate action to hold the State accountable at the Salton Sea. Adequately addressing Salton Sea imperatives has become a condition precedent

for dealing with California and the Lower Colorado River Basin States' water supply reliability issues. It was against this backdrop that the State of California executed a Memorandum of Understanding (MOU) with the Federal government, the purpose of which was to catalyze State restoration leadership and immediate implementation efforts to facilitate Lower Colorado drought contingency efforts. On August 31, CNRA and the U.S. Department of the Interior signed the MOU, recognizing a Salton Sea Roadmap as a prerequisite for addressing Colorado River drought contingency planning, ensuring California water supply reliability and requiring immediate SSMP implementation to achieve critical restoration goals. Both the Obama and the Brown Administrations recognized as a "critical" priority the Task Force's goal of creating 25,000 acres of habitat and/or dust suppression projects by 2025. This MOU commitment compels an immediate, adequate and implementable Salton Sea Roadmap.

IID and the County of Imperial commend both the Obama and Brown Administrations for recognizing the dire threat that a shrinking Salton Sea poses to hundreds of thousands of Southern Californians' public health and to the Pacific Flyway. The SWRCB must act now to ensure that Salton Sea Roadmap implementation can keep pace with transfer impacts. Pursuant to the MOU commitments, as well as its own 2002 Order, the California Water Code, the California Water Plan, and the Administration's own Task Force manifesto, this Board remains the entity with jurisdiction over the QSA transfers and their impacts and is empowered and charged with adopting and enforcing essential Roadmap metrics and timelines.

While adopting the language of the Task Force's mandate, the Notice refers to a successful Salton Sea *Management Program.* Of course, "management" of a problem implies that its potentially catastrophic immediate effects have been averted, so that the task remaining is to monitor and redirect remedial efforts as needed. However, an agency cannot "manage" a problem that is nearing the point of unmanageable injury to public health and countless species. The action called for is concrete programs and projects that will avoid the disaster, not "manage" it. The precipitous decline of the Salton Sea, if left unchecked, will, as so deftly described in others' comments, result in irremediable damage to myriad wildlife species and will cause unimaginable damage to the health of people. Because avoiding these results is clearly the goal of the Task Force, of the Governor, and of this Board, IID provides a specific proposal for development of a Salton Sea restoration Roadmap. There are three principal reasons why this action must be taken immediately.

1) The Colorado River faces a drought of enormous proportion, and IID has been called upon to participate in a Drought Contingency Program (DCP) to help build elevation in Lake Mead to avoid lower priority States' loss of needed water supply. IID has been engaged in negotiating agreements for Lake Mead storage of water generated as a result of conservation. Obviously, more conservation and storage in Lake Mead will mean less drainage flow to the Sea, potentially exacerbating the problem of exposed playa when the goal is to decrease that exposure. IID has made clear from the beginning of these negotiations that it cannot participate in a DCP unless there is a concrete plan in place to ensure that participation to save other states will not add to the destruction of the Salton Sea. A Salton Sea Roadmap is indispensable to address this issue.

2) While the circulated SSMP documents have included well-meaning language aimed at protecting public health, efforts to date fall far short of this critical goal. Remediation

and elimination of emissive playa must be governed by some demonstrable goals and objectives supported by basic principles. First, in the area of air quality protection, efforts must be undertaken that optimize the protection of the greatest number of affected families; i.e., at the south end of the Salton Sea. Second, since the crisis is itself precipitated by diminishing water supply, water-intensive efforts must be minimized and non-water-consuming technologies must be used where feasible. There is no evidence these principles have been followed here. To the contrary, current Task Force proposals and those of the Assistant Secretary press for the development of a perimeter lake of depth to generate recreational value. In none of the discussions are there hydrologic studies that demonstrate there is sufficient water to maintain it. Since the Task Force efforts do not prioritize among public health, habitat development and energy, the perimeter lake proposal is indifferent to these considerations. There is no explanation of how the use of water for these purposes would optimize protection of public health while generating species habitat. There is no description of the criteria for selection of this option or that there was a process of optimizing the method of reducing playa exposure by relying on the lodestones of the three critical restoration goals of protection of public health, habitat creation and development of geothermal energy. Without evidence to the contrary, the option of a perimeter lake seems to be moving inexorably forward, without consideration of these vital criteria or how the perimeter lake would ensure failure of all restoration efforts. A Roadmap timed and scaled to the critical MOU/Task Force goals would ensure accountability and prevent incurrence of such stray sunk-resource costs, and likely demonstrate this option is the least likely to serve as the most efficient means of restoration.

3) Finally, the progress thus far is woefully inadequate. There is no way for an agency to "manage" its way out of the upcoming cliff at the end of 2017. If not resolved soon, the problem may defy resolution. Consider the reality that at the same time that IID faces pressures to store conserved water in Lake Mead, fallowing for generation of transfer water is programmed to end. This double-barreled reality must be understood, faced, planned for and integrated into a concrete Roadmap for protection of the Sea. The QSA partners, IID specifically, the county of Imperial and the environmental community, cannot withstand the consequences of default by neglect. Most significantly, IID cannot stand idly by when the consequences of continuing the transfers result in catastrophic injury to the Imperial Valley, the loss of vital habitat solely because of a default by the State.

B. The Proposed Roadmap That Will Finally Begin the Road to Restoration

IID and the County of Imperial propose that the State of California adopt a "Roadmap" for the restoration of the Salton Sea that will assure a "smaller but sustainable" Salton Sea for generations to come. In order to meet the schedule in the MOU, approximately 3,000 acres of habitat restoration and/or dust suppression projects must be constructed every year through 2025. The map and table included herein show the acreages and areas that are likely to be needed. This Roadmap will serve to guide and coordinate these efforts. IID and the county believe that the state of California can, should and must adopt such a Roadmap no later than December 31, 2016.

The 10-year Roadmap should commit the State of California to:

Identify interim acreages for habitat restoration and/or dust suppression for each year between 2017 and 2025 and timely construct the projects to meet those interim acreage targets.

Provide the necessary resources to construct those habitat restoration and/or dust suppression projects.

Include the development of 500 MW of geothermal projects, including the 250 MW already called for by the federal government, no later than 2025.

Include in each year's budget, from FY 2018 through FY 2026, an amount sufficient to construct the projects identified in the Roadmap.

Conduct quarterly oversight hearings, convened jointly by the State Water Resources Control Board and the California Air Resources Board. The Governor – we believe – has given the two Boards authority to compel sister agencies to take the actions necessary to timely construct projects at the Salton Sea. It is now time to exercise that authority.

Require all state agencies to streamline permitting processes for habitat restoration and/or dust suppression projects.

The time for planning and discussion has passed. The time for action is now. We need a 10-year Roadmap to restore the Salton Sea before it disappears.

2003 – 2017 Projected Salton Sea Exposed Playa Acreage = 18,625 acres
2017 – 2025 Projected Salton Sea Exposed Playa Acreage = 38,442 acres
SSMP Planned Near-Term Habitat = 1,217 acres

C. The State's Salton Sea Management Plan Must Be Completely Overhauled

Data from hydrologic modeling forecasts indicate nearly 38,500 acres of playa at the Salton Sea will become exposed by 2025 after mitigation water deliveries are completed in 2017. This is in addition to the nearly 19,000 acres of lands previously underwater that will have already been exposed since the transfer of conserved water from the QSA began in 2003. In order to meet the MOU's mid-term goal of 25,000 acres of habitat creation and dust suppression projects at the sea by 2025, this will require approximately 65 percent of each year's newly exposed playa to be included within dust suppression and/or habitat creation projects (see table below). On average, this necessitates projects addressing 3,125 acres each year, with annual targets ranging from 2,300 to 3,600 acres during this eight-year period.

2018-2025 Roadmap to Salton Sea Task Force Milestones

	2017	2018	2019	2020	2021	2022	2023	2024	2025
Total Projected Salton Sea Exposed Playa Acreage	18,625	22,172	26,381	31,427	37,011	42,540	47,863	52,752	57,067
Annual Projected Increase in Exposed Playa Acreage		3,547	4,209	5,046	5,584	5,529	5,323	4,889	4,315
Cumulative Projected Increase in Exposed Playa Acreage		3,547	7,756	12,802	18,386	23,915	29,238	34,127	38,442
Annual Playa Acreage Coverage Milestones		2,300	2,700	3,300	3,600	3,600	3,500	3,200	2,800
Cumulative Playa Acreage Coverage Milestones		2,300	5,000	8,300	11,900	15,500	19,000	22,200	25,000

Mid-Term SSMP Playa Coverage Acreage Target/Eight-year (2018-2025) Cumulative Projected Increase in Exposed Playa = 25,000/38,442 = 65.03%. 18,625 acres of playa are projected to be exposed prior to 2018; this acreage is not included in the 65% playa coverage calculation.

Based on the presentations made recently by the California Natural Resources Agency, current Salton Sea management plan near-term actions anticipate Proposition 1-funded projects encompassing nearly 15,000 acres by 2021. While in theory this acreage would be on track to meet 2021's cumulative coverage milestone of 15,500 acres (see table above), CNRA's cost estimates associated with the various projects currently being envisioned around the New, Alamo and Whitewater Rivers are over $450 million, vastly exceeding current funding appropriations of $80.5 million. With unit costs ranging from $19,000 to over $160,000 per acre, the current "plans" do not reflect the implementation needs of the state and region, not to mention the Task Force's 25,000-acre target. Even with funding, projects such as the Species Conservation Habitat Project, under development since at least 2010, continue to be delayed by the State, with construction now postponed until at least 2017 (and a price tag of more than $30 million for 640 acres; unit costs approaching $50,000 per acre). Moreover, the State has admitted that funding will drive the selection of projects, rather than recognizing that public health and environmental protection need to drive State funding and project prioritization. This is unacceptable.

Given that the State estimates low-berm project (i.e., less water-intensive) costs are only about 60 percent of the expense of high berm project (i.e., higher water-use habitat) costs, a different

approach should be considered that focuses, at least initially, on the more cost-effective and higher priority air quality projects that also generally require less water. This would allow for more rapid implementation, minimize public health impacts, and afford time to obtain additional funding for both construction and future operation and maintenance. While this would push some of the habitat-centric features to lower elevations, it would address exposed acreage in a timelier manner with nearer-term health benefits, and allow for the necessary permitting, design, coordination and construction at lower elevations that currently seems problematic for the State to realistically address.

Critical to both air quality and habitat features is the development of the backbone infrastructure that will result in the conveyance facilities needed to move the agricultural drainage waters to the restoration and mitigation sites. Similarly, while unit costs indicate the most cost-effective projects occur in the Whitewater area, the largest area of exposed acreage will occur on the southern end of the Salton Sea, near those communities least able to afford adequate health care or with sufficient access to medical services, so cost-effectiveness cannot be the sole decision criteria in the State's planning efforts.

Lastly, it is important to recognize that, while the concept of using economic development around the perimeter of the Salton Sea to fund restoration is appealing, it is entirely unrealistic in this initial phase of restoration. The immediate priority of the State of California must be dust suppression; otherwise, fugitive dust emissions are likely to cause a public health crisis in the adjacent communities, and particularly for those on the south end of the Sea. Moreover, a deep-water perimeter lake would require disproportionate quantities of the limited water supply available, and for relatively modest environmental and public health benefits. It is time to see such a perimeter lake for what it is: a distraction from the critical path to address the environmental and public health crisis at the Salton Sea.

D. Failure by the State is Not an Option for IID, the County of Imperial, the Environmental Community or IID's Colorado River Partners

The Obama and Brown Administrations have recognized that it is necessary to move toward a "smaller but sustainable" Salton Sea to avoid a public health and environmental disaster. But, for the past year, the Natural Resources Agency has allowed anticipated funding constraints to define and limit the scope of its management program for Salton Sea restoration.

The failure of the State of California to adequately address the QSA water transfer impacts on Salton Sea elevation will be life-threatening for people, will result in the destruction of irreplaceable species habitat, and in this time of drought on the Colorado River, will make it impossible to guarantee a reliable water supply for Southern California or address proactive drought-planning efforts in the Colorado River basin. Cooperation among the Lower Basin States for the management of the ongoing 17-year drought on the Colorado River requires the State of California to develop and implement a plan to restore the Salton Sea, as contemplated in the MOU.

IID filed its petition with the State Water Resources Control Board seeking action by the State of California two years ago. Since that time, the Governor has appointed an assistant secretary for the Salton Sea and the Legislature has appropriated $80 million. The Governor has directed the State Water Resources Control Board and the California Air Resources Board to oversee an aggressive program to move toward a smaller but sustainable Salton Sea. The State of California and the United States have entered into the MOU acknowledging that restoring the Sea is of critical national importance and must begin immediately. These are good first steps, but they have not resulted in even one acre of on-the-ground projects at the Salton Sea.

Too little has been accomplished. The State Water Resources Control Board has provided the Assistant Secretary with numerous opportunities for presentation of a plan with adequate and necessary metrics and timelines, but none has been forthcoming. As of today, the still-tentative and budget-driven product from the Natural Resources Agency still does not contain the comprehensive concrete restoration actions that are required to meet the Administration's stated short- and medium term restoration goals. Based on experience of the past year, there is little – if any – chance that projects could be implemented quickly enough to meet the mid-term targets in the MOU. Moreover, once the Salton Sea starts to recede in earnest, it will be difficult for projects to "catch up" to the receding shoreline. And there is an even broader gap in project planning for the looming air quality problems that will start to rapidly deteriorate the public health once the mitigation water ends in less than one year.

This Board, IID and the State of California are now at a crossroads. The Sea is at the precipice of a future that none would like to imagine, but still no progress is being made. The QSA transfers were entered into by IID to end years of conflict among water users on the Colorado and they have had that effect. IID reluctantly agreed to the transfers and this Board approved them based upon the express condition that the State would restore the Sea. IID believed the Board when it imposed that condition. The Board meant to enforce the condition when it adopted it. But the Sea recedes and the exposed playa expands. IID believes in the integrity of this Board. Neither IID nor this Board believes that by allowing the transfers, they have agreed to some Faustian bargain with the State from which they cannot escape. If the State breaches its promise, there are remedies, but pursuit of those remedies can be avoided if restoration can simply begin now.

Two outcomes await the completion of this workshop. One is continuation of the status quo, which will ultimately mean the destruction of the of the Sea, catastrophic fugitive dust emissions that will plague the poorest part of California, and the collapse of the Pacific Flyway. This outcome will mean the loss of the option of water conservation efforts to build elevation in Lake Mead as part of the developing Colorado River Basin drought planning measures. Finally, this outcome will ultimately mean creation of a rift in the compliance with the QSA. In the view of IID all participants could collectively turn the corner, adopt an enforceable 10-year Roadmap, and begin to fund the necessary projects to backstop the Colorado River water supply that will soon be ending and develop and implement rational projects on the ground that will resist the destruction generated by the lethargy that stands as an impediment to resolution of complex problems.

IID and the County of Imperial call upon the State Water Resources Control Board and the Air Resources Board to exercise the authority given to them by the Governor and order the Natural Resources Agency to submit a legally enforceable 10-year Roadmap to both Boards no later than December 1, 2016, so that both Boards can approve that plan and order its implementation by December 31, 2016. Absent such action, IID and the County intend to take all necessary steps to require action by the State of California. The protection of our residents and our unique environment requires no less.