

1 ROBERT W. HARGREAVES, BAR NO. 139073  
2 LAW OFFICES OF  
3 BEST BEST & KRIEGER LLP  
4 74-760 HIGHWAY 111, SUITE 200  
5 INDIAN WELLS, CALIFORNIA 92210  
6 TELEPHONE: (760) 568-2611  
7 TELECOPIER: (760) 340-6698

8 Attorneys for Salton Sea Authority

9 STATE OF CALIFORNIA

10 STATE WATER RESOURCES CONTROL BOARD

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13 JOINT PETITION OF IMPERIAL  
14 IRRIGATION DISTRICT AND SAN  
15 DIEGO COUNTY WATER AUTHORITY  
16 FOR APPROVAL OF LONG-TERM  
17 TRANSFER OF CONSERVED WATER,  
18 ETC. UNDER PERMIT NO. 7643  
19 (APPLICATION NO. 7482)

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22 **SALTON SEA AUTHORITY'S PETITION FOR**  
23 **RECONSIDERATION OF ORDER WRO 2002-0013;**  
24 **POINTS AND AUTHORITIES IN SUPPORT THEREOF**  
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I.

**PETITION FOR RECONSIDERATION**

Salton Sea Authority (AAuthority@) hereby submits its Petition for Reconsideration of Order WRO 2002-0013 dated October 28, 2002 (AOrder@).

The Authority submits that the Order=s findings of overriding considerations are not supported by substantial evidence, as the long term benefits and impacts of the transfer are not known at this time. The principal benefit of the transfer - maintaining California=s access to surplus Colorado River water - will evaporate in 15 years, at roughly the same time as the full impacts of the transfer will become clear.

The Authority respectfully requests that the Order be modified:

- (1) to delete the Order=s statement of overriding considerations as unsupported by substantial evidence;
- (2) to approve the transfer for an initial period of 15 years, prior to which time this Board will consider an extension based upon supplemental environmental documentation, and after a full public hearing;
- (3) to require one-to-one replacement water to ensure that the transfer does not prejudice restoration of the Salton Sea; and
- (4) to require that air quality impacts be mitigated to a level of insignificance: i.e., to a level at which the transfers= air quality impacts do not substantially burden the Imperial and Coachella Valleys= ability to meet federal clean air standards and conform to all other appropriate emission standards.

This Petition and the accompanying Points and Authorities have been sent to all interested parties.

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**II.**  
**POINTS AND AUTHORITIES IN SUPPORT OF**  
**PETITION FOR RECONSIDERATION**

**A. Introduction**

The Salton Sea is California=s crown jewel of avian bio-diversity, a natural resource of international significance, and a valuable recreational resource. The restoration of the Sea is the subject of federal and state legislation<sup>1</sup>, and its protection for the enjoyment of current and future Californians may well be mandated by the Public Trust Doctrine.<sup>2</sup>

The Order acknowledges, as it must, that the water transfer puts the Salton Sea at risk<sup>3</sup>. The Order attempts to provide for adequate mitigation for 15 years. After that grace period, the Order proposes to cut the Sea loose, in a much more diminished and fragile condition, to fend for itself. By not making a commitment to require full mitigation of transfer- related impacts for the full life of the Sea, the Order likely condemns the Sea to an untimely, and possibly unnecessary, death.

The Authority believes that the Board provides for Ahalf@ mitigation only with some hesitation. The Board is faced with a difficult choice. The future of complex natural and socio-economic systems is difficult to predict. There is an inevitable tradeoff of allocating the risk of the unknown: certainty of the water transfer versus certainty of mitigation of its impacts. Certainty for transfer can only be bought at the expense of uncertainty of long term mitigation.

In its current form, the Order places the burden of risk on the Imperial and Coachella Valleys: the water transfer is certain, mitigation is not. The people who will benefit are secure; the people and natural systems that will bear the burden are at risk.

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<sup>1</sup> The *Salton Sea Reclamation Act of 1998* (12 Stat. 3377); S.B. 482 (Stats. 2000, Ch. 617).

<sup>2</sup> Authority concurs with the National Audubon Society that the Public Trust Doctrine provides broader protection for California=s water-related natural resources than Water Code Section 1736.

<sup>3</sup>Order, p.43.

1 The Board accomplishes this allocation of risk through the Order=s critical element: the  
2 findings of overriding consideration. The Order masks its inability to make any definitive statement  
3 regarding mitigation and impacts beyond 15 years by overriding whatever impacts prove  
4 troublesome beyond that period. In essence, the Board Adrives beyond its headlights@, committing  
5 to a project, the long term impacts of which are not now known.

6 The Authority respectfully submits that that result is contrary to CEQA and good public  
7 policy. CEQA requires that in making statements of overriding considerations, public agencies  
8 carefully weigh the benefits of the project against the burden of its unmitigated impacts. CEQA  
9 requires that overrides be supported by substantial evidence, not unsubstantiated speculation. Given  
10 the uncertainties beyond 15 years, the Order inevitably fails to provide substantial evidence that the  
11 benefits of the transfer beyond that 15 period will outweigh its unknown environmental burdens.

12 The more prudent alternative would be to commit to the transfer project for the length of time  
13 that the Board is willing to commit to mitigation: 15 years. At that time, the project can be  
14 reconsidered, with updated environmental documentation, better informed by the experience of the  
15 intervening years, to decide whether the transfer makes sense for an additional period of time.

16  
17 **1. The Statement of Overriding Consideration is Not Supported by Substantial Evidence.**

18 CEQA requires that, to the extent reasonably possible, the environmental consequences be  
19 known before a project is approved:

20 AThe CEQA process is intended to be a careful examination, fully  
21 open to the public, of the environmental consequences of a given  
22 project, covering the entire project, from start to finish. ...The EIR is  
23 intended to furnish both the roadmap and the environmental price tag  
24 for a project, so that the decision maker and the public both know,  
25 before the journey begins, just where the journey will lead, and how  
26 much they - - and the environment - - will have to give up in order to  
27 take that journey.@ (Natural Resources Defense Counsel v. City of  
28 Los Angeles (2002) 2002 Cal. App. Lexis 4888, p. 3-4; quoting  
amicus, California Attorney General.)

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The environmental price tag of the water transfer is not known past the initial 15 year mitigation period:

- § We do not know the life expectancy of the Salton Sea in absence of the transfer project<sup>4</sup>;
- § We do not know the feasibility of a Salton Sea restoration project<sup>5</sup>;
- § We do not know the magnitude of potential air quality impacts<sup>6</sup>;
- § We do not know the feasibility of mitigating transfer-induced air quality impacts<sup>7</sup>;
- § We do not know the feasibility of mitigating selenium in the drains<sup>8</sup>;
- § We do not know the magnitude of socio-economic impacts<sup>9</sup>;
- § We do not know the feasibility of mitigating those impacts<sup>10</sup>;
- § We do not know the long term feasibility of alternatives to the water transfer: desalinization, conservation, gray water recycling, etc.

If the mitigation of a potential impact is uncertain, the impact must be treated as significant. If the approving agency is unwilling to commit to mitigating that impact, the impact must be overridden or the project abandoned.<sup>11</sup> The approving agency must specify overriding economic,

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<sup>4</sup>Order, p. 9, 44.

<sup>5</sup>Id. at 46.

<sup>6</sup>Id. at 74.

<sup>7</sup>Id.

<sup>8</sup>Id. at 70.

<sup>9</sup>Id. at 48.

<sup>10</sup>Id.

<sup>11</sup>Sacramento Old City Association v. Sacramento (1991) 229 Cal. App. 3d 1011, 1029; *Public Resources Code* ' 21081.

1 legal, social, technological or other benefits that outweigh the significant, unmitigated impacts.<sup>12</sup>

2 In this case, the Board has chosen to override the uncertain Salton Sea and air quality impacts  
3 beyond the 15 year mitigation period. The purported weighing of benefits and burdens lacks  
4 foundation. The unmitigated impacts beyond the first 15 years are unknown and potentially  
5 devastating; the potential benefits are uncertain.

6  
7 **2. Impacts to the Salton Sea.**

8 The Order states that it avoids prejudicing Salton Sea restoration efforts.<sup>13</sup> To the contrary,  
9 the Order may well seal the Sea=s doom.

10 The Order notes that, in absence of the transfer, the Sea may remain viable for 15 to 58  
11 years.<sup>14</sup> That EIR certified by IID provides for mitigation replacement water to maintain that  
12 viability for 30 years. Nevertheless, the Order requires that replacement water be provided for only  
13 15 years, and in a quantity that allows salinity to rise to a level (57-58 ppt) dangerously close to the  
14 level (60 ppt) at which it is estimated that the Sea will die. If that estimate proves overly optimistic,  
15 the Order could lead to the Sea=s death prior to the expiration of the 15 years, notwithstanding the  
16 potential viability of a restoration project.

17 Furthermore, by requiring that impacts to the Sea be mitigated for only 15 years, the Board  
18 reinforces an expectation that the Sea will die, an expectation that will likely become self-fulfilling.  
19 Federal, state and local agencies, including the transfer proponents, are less likely to diligently  
20 pursue restoration if the death of the Sea is already judged acceptable and ordained by half-hearted  
21 mitigation efforts.

22  
23 **3. Air Quality Impacts.**

24 The great weight of the evidence during hearings before this Board was that exposed shore  
25 lines would likely result in significant air quality impacts. Both the Imperial and Coachella Valleys  
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27 <sup>12</sup>*Public Resources Code* '21081.

28 <sup>13</sup>Order, p.3.

<sup>14</sup>Order, p.9.

1 currently have difficulty meeting federal air quality standards. Both hover at the edge of non-  
2 attainment. As noted by the South Coast Air Quality Management District in its letter to this Board  
3 dated October 24, 2000:

4           AAny additional contributions of PM10 from the Salton Sea area  
5           could seriously threaten the attainment status of the Coachella Valley  
6           since full implementation of the PM10 air quality plan demonstrates  
7           attainment of the PM10 health standards with very little margin of  
8           safety. Failure to attain or maintain the federal PM10 standard could  
9           result in federally mandated emission reductions from local sources or  
10          sanctions and potential loss of federal transportation funds.@

11           Notwithstanding the potentially devastating effect to the Imperial and Coachella Valleys, the  
12 Order commits to full mitigation of air quality impacts for only 15 years. Impacts after that period  
13 are deemed uncertain and overridden.<sup>15</sup>

14  
15 **4. The Project=s Benefits Beyond 15 Years Are Not Established.**

16           In justifying overrides of potentially significant impacts to the Salton Sea and the region=s  
17 air quality, the Order relies on the need to implement the California Water Plan:

18           AThe SWRCB finds that the benefit of a reliable Colorado River  
19           water supply under the USBR=s Interim Surplus Criteria are [sic]  
20           critically important to the people of the State. The California Water  
21           Plan identifies the Colorado River as a source of supply for Southern  
22           California. In the absence of the proposed transfer, the State may be  
23           required to immediately reduce its diversions from the Colorado River  
24           by approximately 800,000 acre-feet of water per year.@<sup>16</sup>

25           The exigency of implementing the California Water Plan by December 31, 2002 has driven  
26 the hasty approval of the transfer project. Given the uncertainties regarding the project=s impacts,

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28 <sup>15</sup>Order, p. 75.

<sup>16</sup>Order, p. 76.

1 and the strenuous local opposition to it, the project would not likely be approved at this time if it  
2 were not key to California=s retaining access to the additional 800,000 acre-feet of Colorado River  
3 water.

4 The Interim Surplus Criteria, and California=s ability to divert that additional Colorado River  
5 water, will lapse after 15 years. At that point, California may have other alternatives for satisfying  
6 its water needs. Advances in desalinization, conservation, gray water recycling, or other potential  
7 sources of water may render the benefits of the transfer less compelling when measured against its  
8 then better-understood impacts. There is simply no way to know, at this point, whether the benefits  
9 will outweigh the burdens 15 years hence.

10  
11 **III.**

12 **CONCLUSION**

13 In a moment of candor, the Board states that Abecause we are reserving jurisdiction, we need  
14 not speculate at this time on how or under what circumstances the SWRCB should address  
15 degradation [of the Salton Sea] that might occur 15 years from now@.<sup>17</sup> The Authority agrees that  
16 given the lack of information at this time, the most prudent approach is to reserve judgment.

17 But the Board should be forthright in reserving its jurisdiction. The Board should state  
18 clearly that it approves the transfer for only the15 year period during which the Board is willing to  
19 commit to a defined mitigation program, and during which period impacts are reasonably well  
20 addressed. The Board should decline, at this time, to approve the transfer beyond that period. The  
21 Board cannot do more than speculate now at the magnitude of the impacts, the feasibility of  
22 mitigation, or the exigencies motivating a continued transfer, after that initial 15 year period.

23 CEQA requires that a project=s impacts be reasonably well identified before project  
24 momentum eliminates or reduces the flexibility to subsequently change course.<sup>18</sup>

25 In this case, the full scope of the transfer project=s impacts will not be known for many  
26 years. To maintain prudent flexibility, the Board should not approve the project beyond its ability to  
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28 <sup>17</sup>Order, p. 50, fn. 11.

<sup>18</sup> Sacramento Old City Association v. Sacramento (1991) 229 Cal. App. 3d 1011, 1028.

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foresee those impacts.

Consequently, the Authority respectfully requests that the order be modified:

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DATED: December 3, 2002

Respectfully submitted,  
BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
ROBERT W. HARGREAVES  
Attorneys for Salton Sea Authority