



March 11, 2015



Ms. Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
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Subject: Comment Letter: Salton Sea

Dear Madam Chair and Members of the State Water Resources Control Board:

The Imperial Irrigation District, the Petitioner in this matter, offers the following comments in response to the Board's February 8, 2015 Notice of Public Workshop. IID is gratified at the Board's prompt attention to the matters raised in the Petition. As the Board recognized, the Salton Sea is one of California's most important environmental resources, and the current threat to its continued viability presents an issue of both statewide and local importance. Also of statewide importance are the QSA water transfers, which are a backbone of California's water policy, and which went forward on the understanding that the State of California would fulfill its obligation to restore the Sea so that the transfers would not negatively affect the communities and ecosystem of the Salton Sea region, including the health and welfare of area residents and the critical wildlife habitat that the Sea offers. IID believes that, with the Board's assistance and based on the strong and enthusiastic response that the Petition and the Board's Notice have received to date, the relevant parties, including the State, can move rapidly toward the implementation of a viable, sustainable and fully funded restoration plan for the Sea that will be consistent with the State's obligation and preserve the important balance struck by the QSA. For the Board to facilitate such a process would be in keeping with its highest tradition, consistent with its longstanding role and duty to administer the water rights system in a manner that protects the environment and natural resources of California.

As detailed below, the most crucial point that has emerged since the QSA was signed in 2003 is that a number of responsible entities have concluded that a sustainable restoration plan for the Salton Sea is feasible. Multiple studies—by the Resources Agency, the Salton Sea Authority and independent groups—confirm that the Salton Sea can be restored, and at a reasonable cost. The studies also show that restoration can be accomplished in a way that is sustainable, including by using predictable existing inflows from agricultural return flows rather than requiring water from a separate source—a

crucial feature in this time of drought. A variety of currently planned, small-scale restoration projects at the Sea, although they would represent only a fraction of the overall restoration that is needed, confirm the feasibility of restoration. As the architects of the QSA recognized, creating a smaller, sustainable Salton Sea through restoration is the only way to fulfill the twin goals of allowing California to live within its 4.4 million acre-foot-per-year Colorado River entitlement and, at the same time, preserving the Sea's status as a crucial stopping point on the Pacific Flyway and protecting the people of the Imperial and Coachella valleys and the Salton Sea ecosystem from an environmental, public-health and economic crisis.

This Board is uniquely positioned to bring the interested parties together to work toward a shared vision for the future of the Salton Sea—consistent with the planning work already begun by the Salton Sea Authority in partnership with the Resources Agency. The Board has the statutory authority and duty to ensure that long-term transfers of water, such as the QSA transfers, occur only where they would not have unreasonable adverse effects on the environment and public health. The Board also has the expertise and leadership ability necessary to produce results. Already, the Board's Notice and the inclusive process that it has initiated have generated widespread support for restoration from a broad spectrum of interested parties—including local governments, agricultural groups, nature and conservation advocates, local business groups, and elected officials, to name just a few—and even have brought together parties who, until now, have resorted to litigation to try to resolve differences over the future of the Sea. With invaluable input and support from all these parties, together with a concrete plan for State funding, meaningful restoration work can be commenced immediately, moving toward a full restoration plan that will ensure both a sustainable long-term future for the Sea and the continuation of the current QSA water transfers in furtherance of California's overall water management program.

The Board Is the Ideal Entity to Facilitate the Restoration of the Salton Sea

In its Notice, the Board has appropriately asked: *“How can the State Water Board promote implementation of a reasonable and sustainable plan to address the air, wildlife, and water quality problems at the Salton Sea?”*

The Board is the ideal entity to serve as a catalyst for Salton Sea restoration. As the state agency with plenary authority over water rights and water use in California, it has the relevant subject-matter expertise, the power to bring all key parties together and spur political action, and the statutory authority to ensure that restoration occurs. Indeed, the Board already has begun to catalyze this process by issuing its Notice and convening the workshop: even these small steps have triggered a broader conversation and emerging consensus regarding the need for Salton Sea restoration and the importance of the issue both locally and to the entire State.

The Board's involvement is indispensable to ensuring immediate action at the Salton Sea. As the Board notes in its Notice, and as clearly recognized in the California Water Action Plan, the Resources Agency and Salton Sea Authority have direct statutory responsibility for restoring the Sea. These agencies have made modest—though commendable—progress recently in studying the Sea and the challenges it faces, confirming the feasibility of restoration, and identifying the likely public-health, environmental, and economic effects the region faces if restoration does not occur. And with the modest funds provided for restoration to date, some important initial steps have been made toward beginning the restoration effort. Although these efforts have been designed to serve as the initial stages of a full restoration plan, it is essential that they be fully funded and allowed to move forward

immediately, in order to avert the impending crisis faced by the Sea, the neighboring communities and the bird species that depend on the Sea.

The Board's intervention is also necessary to accelerate progress on the long-term restoration plan, including concrete steps toward restoration funding and implementation. In light of the extended period of inaction preceding the present activities of the Resources Agency and the Salton Sea Authority, it is essential that they, and the other interested parties, be brought together so that some immediate progress toward funding and implementation can be achieved. This Board is uniquely situated to move this process forward—both due to its statutory authority over matters concerning water transfers and through its ability to bring the parties together, emphasize the urgency involved, and act as a facilitator and mediator to allow the parties to determine the key elements and funding sources for a reasonable and sustainable restoration plan. Although the Board would not *lead or fund* the actual restoration efforts, it is the appropriate entity to ensure that restoration is carried out in accordance with California law and the Water Action Plan. As described below, the Board can achieve this goal by convening a collaborative process, through a series of workshops or mediation sessions, geared toward producing a specific, feasible, phased restoration plan that can be approved by the Board, funded and implemented in time to save the Sea.

Finally, it bears emphasis that the Board undoubtedly has the necessary legal authority (and indeed the statutory mandate) to play this role. Water Code § 1736 gives the Board the power to approve long-term water transfers, but this power is limited: the Board may give its approval *only* “where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, and other instream beneficial uses.” This statutory limitation on the Board's power to approve long-term water transfers gives the Board an important practical tool that can be helpful here: as a corollary to its power and duty under Section 1736, the Board may *condition* approval of a transfer on the implementation of measures designed to ensure that the proposed change will not have unreasonable adverse impacts. That is what the Board did in Order 2002-0013, when it conditionally approved the QSA transfers, subject to the implementation of mitigation measures and the Board's ongoing jurisdiction and oversight to revisit its approval in the light of new information and changing conditions. In light of the developments since the approval of Order 2002-0013—including the passage of legislation in which the State committed to restoring the Sea and the multiple studies that have confirmed that restoration is both feasible and necessary to avert an impending crisis at the Sea and in the Imperial and Coachella valleys—IID is asking for the Board to play the same role it did in 2002, but guided by the experience of the intervening 13 years.

The Board Can Facilitate Restoration By Leading and Mediating Discussions Focused On the Funding and Implementation of a Restoration Plan

IID now turns to the Board's next question: “*If there is a necessary and appropriate role for the State Water Board, what specific issues or obstacles need to be addressed, and in what sequence and timeframe?*”

There are three principal obstacles to the restoration of the Salton Sea: (1) a lack of funding; (2) a lack of a sense of urgency; and (3) the absence of a specific restoration plan to which the State and all parties are committed. The State Water Board can act as a catalyst to ensure these requirements are met by using its power to bring all necessary parties (including the Resources Agency and any other necessary State entities) together to develop a specific, feasible restoration plan that will be funded and implemented in time to create a smaller, sustainable Sea that is compatible both with

California's water-supply needs and with the health and well-being of the Sea and surrounding communities.

In the short term, IID suggests the following two steps as a means of moving the restoration process—including funding, further planning, and implementation—rapidly forward. IID recommends that these steps proceed concurrently.

1. Convene a Workshop at the Salton Sea

As an initial step, IID suggests that the Board hold a second workshop in Imperial County, at the Salton Sea, with all interested parties invited to attend. This second workshop would serve two functions. First, it would allow members of the Board and representatives of all parties to see firsthand both the ecological value of the Sea and the risks it faces—as well as the modest habitat restoration projects that have been begun to date. Second, it would allow members of the Board and representatives of all parties to hear from the residents of the Imperial and Coachella valleys, many of whom are unable to travel to Sacramento but who nonetheless have a valuable perspective to offer on the importance of the Sea for their community. IID suggests that this workshop be scheduled as soon as possible.

2. Commence a Series of Biweekly Mediated Sessions With Participation by the Resources Agency and other Responsible State Entities to Move Funding, Planning, and Implementation Forward

IID also suggests that the Board convene a biweekly series of meetings, to be overseen and mediated by one or more Board members, that all necessary parties, including the Resources Agency and any other necessary State agencies, are required to attend. These meetings will have two objectives: first, to develop a concrete funding plan for Salton Sea restoration; and second, to identify and achieve consensus on a specific, feasible restoration plan for the Sea that builds off the efforts developed to date. The results of this mediated process would be presented to the Board for approval and (as discussed below) for adoption in an amendment or amendments to Order 2002-0013. Because of the urgency of implementing a restoration plan before the Sea reaches a critical tipping point, IID suggests that this process begin immediately with an eye toward completion of these objectives in a period of no more than four months.

One important focus of both of these initiatives—the workshop at the Sea and the mediated sessions—will be the status of projects that can be funded and commenced immediately, as well as the longer-term full funding and restoration plan that would build upon those initial efforts. And a critical element of the restoration-related discussions will be for the interested parties, particularly the Resources Agency and other necessary State agencies, to work toward a commitment to a concrete plan for *funding* both the short-term and the long-term aspects of any ensuing restoration plan. To ease the process, the funding effort would need to work in tandem with the phased nature of the restoration plan: all of the funds need not be available immediately, but there must be enough funding for the initial round of habitat projects, and a reliable stream of committed funding for later phases. All possible funding sources should be thoroughly explored and pursued, including Proposition 1 funds, the State General Fund, federal appropriations, and other options. Proposition 1 funds, although they may be an important starting point for the initial restoration projects, will not alone suffice to achieve full restoration—as recognized in the Water Action Plan Implementation Report.

Finally, it is vital that the process be imbued with a sense of urgency. The people of the Imperial and Coachella valleys are already suffering the adverse effects of a lack of progress on restoration, and these effects will be accelerated significantly once deliveries of mitigation water end in 2017. The threat to the bird population and the entire Salton Sea ecosystem is also imminent, and likely irreversible if immediate action is not taken. Despite the efforts of all parties involved, at the current rate of progress, there will not be a sufficient restoration plan in place to avert the dire consequences that inevitably will follow from the end of mitigation water deliveries in 2017.

Status of Current Short-Term Restoration Efforts and Planning for Long-Term Restoration

In its Notice, the Board asked about the status of restoration efforts to date. A survey of these efforts—including the current status of restoration planning and some preliminary habitat-oriented work—indicates that restoration is feasible and that the preliminary stages of restoration can proceed immediately upon the provision of additional incremental funding by the State. A longer-term, full restoration plan can then be finalized based on planning efforts to date, but with the added element of a concrete, long-term funding plan. This full restoration plan can be integrated into the initial, habitat-focused efforts, so that there is no “gap” in the restoration process during the developmental phase.

During the negotiation of the QSA—the last time the Board addressed Salton Sea restoration—there was some question as to whether restoration would be feasible. When the QSA parties applied for permits to transfer conserved water, the Board conditioned the transfers on deliveries of mitigation water that would maintain the surface area and salinity levels at the Sea for a period of 15 years, in order to allow the State to assess feasibility and to design and implement a comprehensive restoration plan. The Salton Sea Restoration Act, passed by the Legislature in 2003 as a predicate to the signing of the QSA, committed the State to evaluate the feasibility of restoring the Sea and to implement a restoration plan. The Act directed the Resources Secretary to develop a “preferred alternative” that would maximize a number of statutory objectives, including habitat restoration, the elimination of air quality impacts and the protection of water quality. (Fish & Game Code § 2931.)

In May 2007, after extensive consultation with stakeholders, the Resources Secretary submitted a report outlining his proposal for a “preferred alternative,” consisting of a large, horseshoe-shaped recreational lake that would cover the north end of the Sea, and a large-scale habitat complex at the southern end. The preferred alternative demonstrated the feasibility of Salton Sea restoration at an ecological and engineering level. But by seeking to restore much of the Sea to the conditions that existed during its recreational heyday in the 1950s and 1960s, the preferred alternative was overly ambitious. It would have cost an estimated \$8.9 billion—a price that proved politically impossible, particularly as the declining economy created budgetary pressures. Another challenge was the “all-or-nothing” approach that this alternative took, calling for the construction of more than 50 miles of dikes, berms, and barriers that were necessary to the operation of the plan. Most of this extensive engineering work and infrastructure construction was required at the inception of the project, so that significant upfront funds would be necessary even for preliminary implementation. Finally, the preferred alternative relied upon an overly optimistic estimate of the level of expected inflows to the Sea—so even if the infrastructure could be built, the plan was not sustainable based on actual existing inflows. The preferred alternative was never funded, and progress on restoration has remained stalled for years.

Over the last two years, there has been some modest progress toward Salton Sea restoration, including renewed planning efforts and some preliminary funding—but much more is needed to avert the crisis described in the Petition.

In 2013, the Legislature reaffirmed its commitment to restoration by enacting AB 71, which requires the Resources Secretary, in cooperation with the Salton Sea Authority, to lead restoration efforts. The Legislature appropriated money for a new restoration study and for certain restoration pilot projects, and also directed the Resources Agency to begin implementing “early start” habitat development. In November 2014, California voters passed Proposition 1, which makes available up to \$475 million for the State to fulfill environmental obligations. Some of these funds may be available for Salton Sea restoration, but no funds have been appropriated for that purpose to date, and the Sea may have to compete for these funds with other environmental priorities.

In the wake of these measures, over the past two years, the Salton Sea Authority and the Resources Agency have made some progress on planning for full restoration of the Sea, and are now expected to produce a new plan sometime in mid- to late-2016. The initial contours of any full restoration plan are already apparent. Its key elements would include engineered structures (such as dikes or berms and a salt sink) to stabilize the salinity level in the remaining Sea, sustained by a level of return flows compatible with the QSA transfers; dedicated habitat zones to preserve the Sea’s ecosystem; treatment of exposed playa to prevent dust emissions; and the development of renewable energy resources and recreational facilities at the Sea. It is important that such a restoration plan could be implemented in a phased manner, as funding becomes available. The projects currently underway or planned for the immediate future would constitute the first phase of this overall restoration project.

Finally, some modest restoration projects—largely in the form of “early start” habitat—have been developed and are either in progress, funded by the limited revenue provided by the State to date, or are ready for implementation when funding becomes available. These programs are designed to test the effectiveness of various techniques for playa reclamation, creation of wetlands, development of fish habitat, and related efforts to create a smaller but sustainable Sea. A brief description of these projects follows:

- The Species Conservation Habitat Project—the project mentioned in the State Water Action Plan and in the Notice—is a wetlands restoration project planned for an area around the mouth of the New River at the south end of the Sea. It will be built on IID property, and the construction and planning are being cooperatively managed by the Salton Sea Authority, the State, and IID. Phase I, which involves the construction of approximately 700 acres of new wetlands, has been funded by a grant of \$25 million in Proposition 84 funds. Phase I will break ground near the end of 2015. Phase II is more ambitious; it would call for an expansion of the project to 3,600 acres, at a cost of approximately \$100 million. Phase II has not yet been funded.
- The Red Hill Bay Wetlands Restoration Project is a joint undertaking by IID and the U.S. Fish & Wildlife Service. If it goes forward, the project would create between 600 and 700 acres of new wetlands habitat at the south end of the Sea near the mouth of the Alamo River. The State has contributed \$2 million in Prop. 84 funds, but this will cover only a fraction of the total cost of the project. With the necessary additional funds, ground could be broken on this project in 2015. Only limited funding for this project has been secured.

- The Marine Habitat Project is a collaboration between IID and a private company for the creation of 2.5 acres of solar gradient ponds that can both produce solar energy and create habitat for fish. Prop. 84 funds will cover approximately one-third of the cost, and some funds may come from the Bureau of Reclamation, but funding is needed for the remainder of the work.
- The Torres Martinez Wetlands Project involves efforts by the Torres Martinez Desert Cahuilla Indian Tribe, with partial funding from Prop. 84, to restore or enhance a series of habitat ponds on the north end of the Sea. If funded, Phase I would produce approximately 80 acres of wetlands. Phase II would contribute a further 20 acres. Separately, IID also has proposed to create a further 50 acres of wetland upstream from the mouth of the New River.

With appropriate funding, all of these projects, including Phase II of the Species Conservation Habitat Project, could begin breaking ground within the next year. And with further funding, most of them could be expanded and construction could begin in 2016.

These small projects provide an important proof of concept for the ultimate vision of human-health preservation and habitat restoration at the Sea. With appropriate funding, they also would serve as the initial building blocks or beginning stages on which any final restoration plan can be constructed. In contrast to the preferred alternative, which required large-scale, upfront infrastructure and associated costs, these projects begin the process of restoration immediately by creating bird habitat that will help sustain the Sea as a stop on the Pacific Flyway and reduce the air quality effects of exposed playa along the shore, all using predictable existing inflows. Incremental funding will be sufficient to move these interim projects along, while planning continues for a long-term restoration and funding plan.

At the heart of all these current efforts is the concept of a smaller, sustainable Sea. IID does not advocate returning the Sea to its halcyon days of the 1950s and 1960s. The preferred alternative failed, in large part, because it sought to do that, and (relatedly) because its massive upfront cost proved prohibitive. The current vision for the Sea, by contrast, contemplates more modest restoration efforts, some beginning immediately, directed primarily toward preserving human health and providing habitat for the many species of birds that depend on the Sea.

Critically, a sea with a smaller surface area and volume can be sustained and maintained using currently projected levels of inflows. Under current estimates, once the QSA is fully implemented, inflows to the Sea will be between approximately 700,000 and 750,000 acre feet per year in normal years, primarily in the form of agricultural return flows. The projects described above confirm that the Sea can provide extensive bird and fish habitat, and protect human health, using these modest but relatively certain agricultural return flows. Indeed, it is the availability of relatively steady agricultural return flows that distinguishes the Salton Sea from sites like Owens Lake and the Bay Delta, and makes restoration a realistic and achievable concept.

In sum, these green shoots that have emerged over the last two years are important and encouraging, but these projects would counteract only a small fraction of the negative impacts of the QSA transfers on the Salton Sea, even if they were fully funded (which they are not). As for the full restoration plan, the Salton Sea Authority is expected to complete a proposed plan by mid-2016. But work will not begin immediately on implementation of that plan, which still will require environmental

approvals and may take years to be implemented. Nor, in light of the history of Salton Sea restoration proposals, is there any current assurance that a plan, once put forward by the Authority, will in fact be funded and implemented.

The Human, Environmental, and Economic Costs of Inaction

IID is before the Board because the people of the Imperial and Coachella valleys cannot risk any further delay in funding and implementation of meaningful restoration—both in the short term and in planning for the long-term future of the Sea. Current projections show that thousands of acres of highly emissive playa will become exposed at the Sea in the coming years, accelerating sharply when deliveries of mitigation water end in 2017. In addition, with the end of mitigation water, the Sea will very quickly exceed the critical 60 mg/l salinity level thought to be fatal to remaining fish populations. If the Salton Sea does not have adequate bird habitat in place when the fisheries collapse, migratory bird populations that depend on the Sea will be forced to find alternative sources of food. Because few if any such alternative sources exist, the likely result will be a dramatic reduction in the bird population at the Sea—but it is not clear where the birds will go, because there are few if any suitable alternative habitats nearby.

What is needed now is funding for the early-start projects that are permitted and ready for implementation, together with an expansion of such projects to begin to cope with the imminent retreat of the Sea. These projects can serve both to restore the Sea and to reduce the State's ultimate QSA-related mitigation liability. The QSA Joint Powers Authority is engaged in ongoing mitigation work around the Salton Sea, under QSA terms that require the State of California to assume all QSA-related mitigation costs beyond the first \$133 million in 2006 dollars (which is to be borne jointly by IID, the San Diego County Water Authority, and the Coachella Valley Water District). The need for mitigation will accelerate when the deliveries of mitigation water cease in 2017. But because of the limited mandate of the JPA, its projects generally are single-purpose. By coordinating mitigation and restoration through dual-purpose projects, the parties could achieve considerable economies in order to stretch the budget of the JPA and reduce the ultimate cost of restoration.

Finally, as explained in detail in the Petition and as will become clear at the March 18 workshop, a failure by the State to fulfill its restoration obligations now would ultimately come at a severe cost once its full mitigation obligations are triggered; that is, after the \$133 million mitigation funding threshold under the QSA is reached. As explained in the November 2013 State Auditor Report,¹ the State's mitigation obligations will require some \$800 million in upfront costs and an annual \$50 million thereafter. But, as the Auditor noted, "by performing restoration activities now that are also designed to reduce the need to undertake mitigation activities in the future, the State could potentially decrease its future mitigation costs." (Report at pp. 2, 23.) Moreover, these expenses are just a fraction of the total financial costs that will result from a failure to restore the Sea. Other costs—in the form of increased public-health expenditures, loss of productivity, premature deaths, loss of habitat, decreased property values, and other impacts—are likely to reach into the tens of billions of dollars, according to a September 2014 report by the Pacific Institute.²

¹ Available at <http://www.auditor.ca.gov/pdfs/reports/2013-101.pdf>.

² Available at <http://pacinst.org/publication/hazards-toll/>.

The Relief Requested in IID's Petition Is Appropriate

A final subject addressed by the Board's Notice is the question of whether the relief sought by IID in its Petition is appropriate. The Board asks: "*What changes, if any, should the State Water Board consider making to Revised Order WRO 2002-0013?*" In addition, the Board raises a series of questions as to the appropriateness of the relief that IID seeks. IID addresses these points below.

As for the issue of changes to Order 2002-0013, IID submits that, at this stage, the Board's central and immediate objective should be to use its authority to compel relevant agencies and parties to develop a coordinated, consensus approach for restoration, including short-term and long-term restoration funding consistent with the State's commitments. Toward that end, some changes to Order 2002-0013 may be necessary and appropriate to spur progress on the State's restoration efforts. As recognized in the Board's Notice, Order 2002-0013 explicitly balanced the important water-supply benefits of the QSA against the risk of serious harm that the transfers potentially posed to the Sea and the Imperial and Coachella valleys. Based on this balance, the Board conditioned approval of the QSA transfers on delivery of mitigation water for a 15-year period—an approach geared toward maintaining the elevation and salinity levels of the Sea pending the State's study of feasibility and the development and implementation of a restoration plan.

The Board—with great foresight—anticipated that it might need to revisit the question of restoring the Sea prior to 2017. In Order 2002-13, the Board specifically reserved its authority to add, delete or modify its approval of the transfers—a recognition that further action might need to be taken with respect to the transfers if the environmental status quo was threatened.

In the 13 years since the Board issued Order 2002-0013, as described above, several things have happened, and much has not happened. What has happened is that multiple studies have confirmed the feasibility of restoration. Some modest funding has been provided for Salton Sea restoration projects and, with the use of these funds, some interim measures have been successful, though not on a scale sufficient to avert the looming crisis faced by the Sea and surrounding communities. Some planning for long-term restoration also has occurred, although this planning has not produced the sort of concrete progress on full-scale restoration funding and implementation that is urgently needed. And finally, there have been some modest steps toward restoration funding, including the passage of Proposition 1 by the voters last fall. But despite these efforts, no full restoration plan has been funded or implemented, and the limited efforts to date fall far short of what is needed. In the meantime, the fears that led the Board in Order 2002-0013 to require mitigation of the effects of the water transfers are coming to pass, bringing about the very threat to the Sea and to the Imperial and Coachella valleys that would have prevented the QSA from going forward absent the State's restoration commitment.

In light of all this, the relief that IID seeks is simple and straightforward. The fact that restoration of the Salton Sea is feasible means that the Board may wish to consider modifying Order 2002-13 to facilitate such restoration—either by amending Order 2002-0013 or by issuing a separate order designed to move the restoration process forward. Given the multiple studies of Salton Sea restoration that have been carried out since 2002, the Board should make an explicit finding that restoration is feasible. And the Board should direct the State (including both the Resources Agency and other necessary State agencies) and the other affected parties to participate in the workshop and mediation sessions described above.

To address the longer-term questions, as detailed in the Petition, the Board should add a provision to Order 2002-0013 requiring the State to fulfill its restoration obligations as a condition of the QSA transfers. To be clear, no party, including IID, advocates curtailing the QSA transfers—which remain a key component of California’s Colorado River Water Use Plan and of the overall balance of the State’s water resources and needs. But the statewide benefits derived from that bargain need to be balanced by the fulfillment of the statewide commitment to implement restoration. It would be unjust, more than a decade since the State made the commitment to restore the Sea, to allow only part of that bargain (the water transfers) to go forward, while the other essential part (Salton Sea restoration) falls by the wayside. Given the importance of the water-supply benefits of the QSA transfers, the Board’s statutory power to ensure that such transfers do not unreasonably affect the Salton Sea region will provide a powerful motivation to all parties to work toward restoration.

IID appreciates the Board’s concern about taking any action that “has the potential to unravel” the QSA—an outcome that IID agrees would have significant and undesirable water-supply implications for the State. But the power to impose that condition is the best mechanism the Board ultimately has to ensure that such an outcome does *not* occur. Unlike any other regulatory body, the Board has both the authority and the statutory mandate to ensure that the QSA transfers are carried out in a manner compatible with the protection of the environment at the Salton Sea and the health and welfare of the residents of the Imperial and Coachella valleys, consistent with the parties’ clear understanding at the time the QSA was signed. And the Board also has plenary authority to make any changes in Order 2002-0013, as may be appropriate in light of developments since 2002, such as the Legislature’s commitment to restore the Sea and the looming threat posed by the end of deliveries of mitigation water in 2017. It also would be appropriate for the Board to require regular reporting of progress toward restoration, with the understanding that the full authority of the Board could be used to ensure that the State fulfills its obligation in a timely manner. Finally, as part of its continuing jurisdiction, the Board could review and modify any other portion of Order 2002-0013, including but not limited to the water transfers. Again, that power should be viewed as a valuable tool to moving the process forward, given the critical importance that the transfer have to the water policy of the entire state. In sum, the best way to avoid any disruption of the QSA transfers is for the Board to use its plenary authority in the manner described above to ensure that a reasonable, sustainable restoration plan is funded and implemented.

The Notice also raises a series of questions as to the appropriateness of the relief IID seeks. IID offers the following comments in response to the Board’s questions.

1. The Notice suggests that IID’s request for a condition may not be appropriate because environmental problems would exist at the Salton Sea, even absent the transfers. IID respectfully disagrees with this suggestion. The QSA transfers do not just exacerbate the environmental problems at the Sea; rather, absent restoration, they will fundamentally transform those problems into a threat to the entire Salton Sea region. Salton Sea–related air quality problems are almost exclusively the result of the QSA transfers. Water transfers under the QSA significantly reduce return flows into the Salton Sea. This reduction, in turn, reduces the elevation of the Sea and exposes underlying playa to the air, and it is this exposed playa that poses the greatest threat to human health. (Petition at p. 46; California State Auditor, *Salton Sea Restoration Fund* (Nov. 2013), at pp. 18-19.) To be sure, some playa might have been exposed without the transfers. But there is no question that the dramatic, sustained, and unprecedented exposure of playa anticipated in coming decades, absent restoration, will be a direct result of the reduction in return flows stemming from the QSA transfers.

With respect to salinity levels, the Environmental Impact Reports prepared for the QSA show that, absent restoration, the QSA would have the effect of accelerating the demise of the Sea by nearly a decade, causing the Sea to become too saline to support aquatic life far earlier than under baseline conditions. As the Board recognized in 2002, without swift implementation of a restoration plan, the QSA has the potential not merely to exacerbate problems at the Sea, but to make saving the Sea a scientific impossibility. This was why, in 2002, the Board ordered the delivery of mitigation water for 15 years. At the time, the Board's assumption that the State would carry out its statutory restoration obligation within 15 years was entirely reasonable. But the State has not met that obligation, and we are now faced with the grim possibility that continued implementation of the QSA will not merely "exacerbate" the problems at the Sea, but make them irreversible.

Moreover, even if certain air- and water-quality problems would exist at the Salton Sea without the QSA, that would not mean that the State should not be required to fulfill its legislative commitment to restore the Sea, nor would it undermine the conclusion that that commitment was a necessary predicate to the agreement itself. The QSA was a compromise to help resolve California's water challenges, and the State's promise to restore the Sea was a necessary element of that compromise, without which IID would not have consented to the agreement. Indeed, restoration of the Sea was the main component of the deal that directly benefited the residents of the Imperial and Coachella valleys. The State of California may not—by dragging its feet until it is impossible to save the Sea—undo that compromise and force the Salton Sea region to continue to bear the costs of the QSA without receiving its benefits.

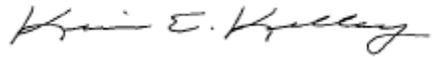
2. The Notice next asks whether IID's request for relief is appropriate in light of the California Water Action Plan, which confirms the responsibility of the Resources Agency and the Salton Sea Authority to lead restoration. In fact, IID's Petition seeks to carry out—not contravene—the vision laid out in the Plan. The Petition recognizes that the Resources Agency and the Authority will lead restoration efforts, but asks this Board to use its statutory authority to accelerate the process and ensure its completion. There is no tension between the Board's involvement and the ultimate responsibility lying with the Resources Agency and Salton Sea Authority.

Restoration also will further the key goals set forth in the Water Action Plan—namely, ensuring reliable water supplies; making conservation a way of life; protecting and restoring important ecosystems and habitat; and creating a more resilient, sustainably managed water resources system that can withstand pressures in coming decades. (See Water Action Plan at p. 4.) Salton Sea restoration under the QSA combines these goals by allowing Imperial Valley farmers to implement more efficient irrigation techniques, thereby conserving water for transfer to urban users, *without* decimating the critical ecosystem at the Salton Sea or the air quality in the region.

3. Finally, the Notice expresses concern that IID's request for relief might "unravel" the QSA, "which would have significant water supply implications for the State." As discussed above, what threatens to "unravel" the QSA is not anything IID proposes to do, but rather the State's failure, to date, to accomplish significant progress on restoration of the Salton Sea. Restoration is just as essential an element of the QSA as the water transfers. Indeed, as IID explained in its Petition (at pp. 36-44), the State undertook its restoration obligation *specifically because* the harm that would otherwise result from the water transfers was of such immense concern that it had previously derailed the QSA negotiations. All IID seeks is to have the QSA's grand bargain enforced in its entirety. Any threat to the durability of the QSA and its water-supply benefits to the State comes not from IID, but from the absence of restoration.

We look forward to discussing all of these issues with the members of the Board at the forthcoming Workshop, and again commend the Board for its attention to this matter of profound significance to all Californians.

Very truly yours,

A handwritten signature in cursive script that reads "Kevin E. Kelley".

Kevin E. Kelley
General Manager

cc: Stephen W. Benson, Board President, Imperial Irrigation District
Ralph Cordova, Jr., County Executive Officer, County of Imperial
Terry Fulp, Lower Colorado Regional Director, Bureau of Reclamation
Jeffrey Kightlinger, General Manager, Metropolitan Water District of Southern California
Maureen A. Stapleton, General Manager, San Diego County Water Authority
Jim Barrett, General Manager, Coachella Valley Water District