**STATE OF CALIFORNIA**

**STATE WATER RESOURCES CONTROL BOARD**

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| In the matter of<br><br>IMPERIAL IRRIGATION DISTRICT'S (IID) AND SAN DIEGO COUNTY WATER AUTHORITY'S (SDCWA) AMENDED JOINT PETITION FOR APPROVAL OF A LONG-TERM TRANSFER OF CONSERVED WATER FROM IID TO SDCWA AND TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, AND PURPOSE OF USE<br><br>Under Permit 7643 on Application 7482 of Imperial Irrigation District<br><br>(counsel listed on next page) | **PETITION OF IMPERIAL IRRIGATION DISTRICT FOR MODIFICATION OF REVISED WATER RIGHTS ORDER 2002-0013**<br><br>**APPENDIX – Volume II** |

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**CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

**PETITION FOR MODIFICATION OF REVISED WATER RIGHTS ORDER 2002-0013**

# APPENDIX

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## Volume 1



## Volume 2

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

# REVISED

**ORDER WRO 2002 – 0013**

REVISED IN ACCORDANCE WITH ORDER WRO 2002-0016

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In the Matter of

**IMPERIAL IRRIGATION DISTRICT'S (IID) AND
SAN DIEGO COUNTY WATER AUTHORITY'S (SDCWA)
AMENDED JOINT PETITION FOR
APPROVAL OF A LONG-TERM TRANSFER OF CONSERVED WATER
FROM IID TO SDCWA
AND
TO CHANGE THE POINT OF DIVERSION, PLACE OF USE, AND PURPOSE OF USE
UNDER**

PERMIT 7643 ISSUED ON
APPLICATION 7482 OF
IMPERIAL IRRIGATION DISTRICT

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SOURCE: COLORADO RIVER

COUNTY: IMPERIAL

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LIST OF ACRONYMS

| | |
|---|---|
| µg/L | Micrograms per liter |
| afa | acre-feet per annum |
| BMPs | Best Management Practices |
| BO | Biological Opinion |
| CALFED | California/Federal Bay-Delta Program |
| CEQA | California Environmental Quality Act |
| CESA | California Endangered Species Act |
| CFBF | California Farm Bureau Federation |
| cfs | cubic feet per second |
| CRIT | Colorado River Indian Tribes |
| CRWQCB | California Regional Water Quality Control Board |
| CVWD | Coachella Valley Water District |
| DFG | California Department of Fish and Game |
| DHCS | Drain Habitat Conservation Strategy |
| DOI | U.S. Department of Interior |
| DOW | Defenders of Wildlife |
| EIR | Environmental Impact Report |
| EIS | Environmental Impact Statement |
| ESA | federal Endangered Species Act |
| FEIR | Final Environmental Impact Report |
| HCP | Habitat Conservation Plan |
| ICAPCD | Imperial County Air Pollution Control District |
| IID | Imperial Irrigation District |
| MOU | Memorandum of Understanding |
| MWD | Metropolitan Water District of Southern California |
| NCCP | Natural Community Conservation Plan |
| NEPA | National Environmental Policy Act |
| PCL | Planning and Conservation League |
| PM 10 | particulate matter, less than 10 microns in size |
| ppb | parts per billion |
| ppt | parts per thousand |
| PVID | Palo Verde Irrigation District |
| QSA | Quantification Settlement Agreement |
| R.T. | Reporter's Transcript |
| SANDAG | San Diego Association of Governments |
| SB | Senate Bill |
| SCAQMD | South Coast Air Quality Management District |
| SDCWA | San Diego County Water Authority |
| SIP | State Implementation Plan |
| SSA | Salton Sea Authority |
| SSHCS | Salton Sea Habitat Conservation Strategy |
| SWRCB | State Water Resources Control Board |
| TDS | Total Dissolved Solids |
| TMDL | Total Maximum Daily Load |
| USBR | U.S. Bureau of Reclamation |
| USEPA | U.S. Environmental Protection Agency |
| USFWS | U.S. Fish and Wildlife Service |

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

# REVISED

**ORDER WRO 2002 – 0013**

REVISED IN ACCORDANCE WITH ORDER WRO 2002-0016

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In the Matter of

**IMPERIAL IRRIGATION DISTRICT'S (IID) AND
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PERMIT 7643 ISSUED ON
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IMPERIAL IRRIGATION DISTRICT

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SOURCE: COLORADO RIVER

COUNTY: IMPERIAL

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## 1.0 INTRODUCTION

In this order, the State Water Resources Control Board (SWRCB) conditionally approves a joint petition filed by the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA) for approval of a long-term transfer of conserved water from IID to SDCWA pursuant to an agreement between IID and SDCWA, and conditionally approves a petition filed by IID to change the point of diversion, place of use, and purpose of use under Permit No. 7643 (Application No. 7482). The proposed transfer is for a term of 45 to 75 years.

Pursuant to Water Code section 1736, the SWRCB may approve a long-term transfer petition if the SWRCB finds that the transfer will not result in substantial injury to any legal user of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. In this order, the SWRCB finds that the transfer will not result in substantial injury to any legal user of water. We also find that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses, provided that certain mitigation measures are implemented. Accordingly, the transfer petition is approved, subject to specified conditions.

The potential for the proposed conservation and transfer project to affect fish and wildlife in and around the Salton Sea has generated the most concern in this proceeding. The Salton Sea is a saline lake that is almost entirely dependent on agricultural runoff, primarily from IID. The Salton Sea supports a productive fishery and numerous fish-eating birds, but this ecosystem is in jeopardy. Because the Salton Sea has no outlet, all the salt and nutrients that flow into the Sea continue to accumulate. Without a salinity control project, the Salton Sea will become too saline to support a viable fishery in the coming decades. The feasibility of restoring the Salton Sea is the subject of an ongoing study by the Secretary of Interior and the Salton Sea Authority.

The implementation of conservation measures within IID that reduce farm runoff or delivery system losses will reduce inflows to the Salton Sea, decreasing the time before the Salton Sea becomes too saline to support the fishery. Conserving water by fallowing agricultural land will also reduce inflows, but to a lesser extent.

In determining whether the impacts of the project to the Salton Sea would be unreasonable, the SWRCB must take into account all relevant factors, including the nature and extent of the impacts, the benefits of the proposed transfer, and the cost of mitigation measures. The proposed transfer is a critical part of California's commitment to reduce its use of water from the Colorado River. The State's water supply could be severely impacted if the transfer is not implemented and the Secretary of Interior limits California's diversions from the Colorado River. In addition, the only viable strategy for mitigating impacts to the Salton Sea that has been identified is providing replacement water to the Sea to compensate for reduced inflows. This mitigation strategy is likely to be costly and, unless an alternative source of water is found, will entail fallowing land within IID. Land fallowing could have significant socio-economic impacts within Imperial County.

In view of the foregoing considerations, we conclude that salinity levels at the Salton Sea that would have existed in the absence of the transfer should be maintained for a period of 15 years. This requirement mitigates project impacts to the Salton Sea for a long enough period to provide time to study the feasibility of long-term restoration actions and begin implementation of any feasible restoration projects. At the same time, it avoids prejudging those restoration-planning efforts. This order avoids unduly burdening the transfer by limiting mitigation requirements to the incremental impacts of this transfer. It also recognizes that it would be unreasonable to have these mitigation requirements remain in effect if restoration planning either ultimately produces a plan that will restore the Salton Sea without requiring continued mitigation by the parties to the transfer or reveals that restoration is infeasible. In so doing, this order achieves a reasonable balance between the State's interest in protecting the fish and wildlife that depend on the Salton Sea, the State's interest in protecting the economy of Imperial County, and the State's interest in the implementation of this transfer to meet California's water supply needs.

This matter is brought before the SWRCB as a voluntary change petition. Nothing in this order requires the petitioners to proceed with the transfer, or in the absence of the transfer to satisfy any of the conditions or mitigation measures described in this order.

### 1.1 IID's Water Right Permit

The SWRCB issued Water Right Permit No. 7643 to IID on January 6, 1950. Permit 7643 authorizes IID to divert a maximum of 10,000 cubic feet per second (cfs) from the Colorado River from January 1st to December 31st of each year for irrigation and domestic use on 992,548 acres of land. The permit limits IID's total annual diversion from the Colorado River under all its water rights and its federal contract to 3,850,000 acre-feet per annum (afa). As specified in the Seven-Party Water Agreement of August 18, 1931, which is described in detail in section 3.1, below, this is a collective right shared with other agricultural water users. IID also holds pre-1914 appropriative water rights and has a contract with the Secretary of Interior for the delivery of Colorado River water.[1]

[1] IID holds seven other water right permits for power generation, which are not involved in the proposed water transfer.

## 1.2 Proposed Project

On October 5, 1998, IID and SDCWA submitted a joint petition to the SWRCB seeking approval to transfer up to 300,000 afa to SDCWA under IID's Permit 7643. (SWRCB 1b.) IID and SDCWA subsequently filed two amendments to the petition, which reduce the quantity of water to be transferred to SDCWA by 100,000 afa, and instead allow for the transfer[2] of 100,000 afa to Coachella Valley Water District (CVWD) and the Metropolitan Water District of Southern California (MWD). (SWRCB 1c; SWRCB 1d.) The transfer is for a term of 45 years with an optional 30-year renewal period, for a total of 75 years.

Under the terms of various agreements among the parties, the transfer to SDCWA initially would be implemented in 20,000 afa increments. (See IID 1, p. 21.) In the 24th year, the full quantity of the transfer will be reached: up to 200,000 acre feet to SDCWA and 100,000 acre feet to CVWD or MWD. According to the terms of IID's agreement with CVWD and MWD, the quantity of water to be transferred to CVWD and MWD may be reduced by 50,000 afa in the 45th year of the transfer. (IID 1a.) The petition also requests that the SWRCB make certain findings, in addition to the findings required to approve the proposed long-term transfer. (SWRCB 1b, pp. 2-3; IID 23, pp. 4-5; see also IID Closing Brief, pp. 13-16.) These findings are discussed in section 7 of this order.

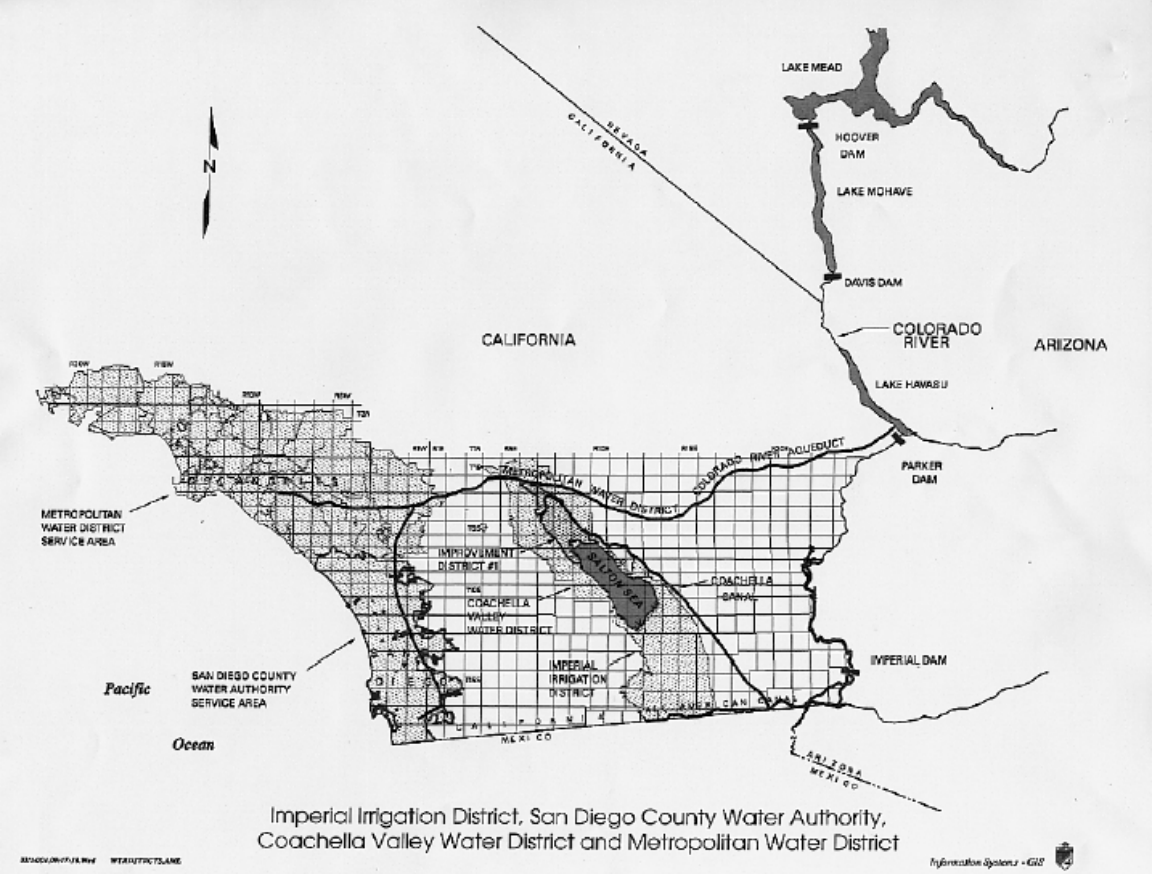
## 1.3 Proposed Changes to IID's Permit

The petition seeks changes in the place of use, point of diversion, and purpose of use authorized under Permit 7643. The proposed changes are necessary to allow for a transfer under Permit 7643. The petition seeks to expand the authorized place of use to include the service areas of SDCWA, CVWD, Improvement District No. 1, and MWD. For water that is transferred

[2] IID, SDCWA, CVWD and MWD have characterized the proposed delivery of water to CVWD and MWD as an "acquisition" and object to the SWRCB's characterization of the delivery of water to those districts as a "transfer." However, petitioners, IID and SDCWA, have requested that the SWRCB approve certain changes to IID's permit under the Water Code that will allow for the delivery of water to CVWD and MWD under IID's permit. The water sought by CVWD and MWD could be "acquired" by them under the terms of the Seven-Party Water Agreement, without approval of the SWRCB if IID were to decline to take delivery of the water. Because petitioners are asking the SWRCB to approve changes that would authorize a transfer of water to CVWD and MWD under IID's permit, and for ease of discussion, this order will refer to the proposed delivery of water to CVWD and MWD as a "transfer."

to CVWD, the authorized point of diversion, Imperial Dam, would remain the same. For water that is transferred to SDCWA or MWD, the authorized point of diversion for the water transferred would be 143 miles upstream at the Whitsett Intake at Parker Dam on Lake Havasu, and the primary purpose of use of the transferred water would be municipal use. Figure 1 depicts the proposed new point of diversion and place of use.

Figure 1




## 1.4 Physical Setting

IID is located within the Salton Trough, a deep valley in the southeastern corner of the state. Due to subsidence along major earthquake fault systems, much of the Salton Trough lies below sea level. The Salton Trough straddles the boundary between Riverside and Imperial Counties and is bounded to the south by the Mexicali Valley in northern Mexico. To the west, the rugged mountains of the Peninsula Ranges separate the major population centers of San Diego County from the Imperial Valley. To the east, about forty miles away, lies the Colorado River, which provides water to support both the agricultural economy of the Salton Trough and the municipal and industrial areas of the coastal plain.

In prehistoric times, the Salton Trough was the northern extension of the Gulf of California. During the Pleistocene epoch, the Colorado River deposited within the Gulf great volumes of sediment eroded from the Colorado Plateau, forming a delta near Yuma, Arizona, close to the current confluence of the Gila River and the Colorado River. Eventually, the delta extended across the mouth of the Gulf, isolating the Salton Trough from the Gulf of California and forming an inland lake of saline water. Since then, intermittent fresh and saline lakes have repeatedly formed in the basin either as a result of flood flows or as a result of the Colorado River changing course back and forth across its delta. At times, the entire flow of the Colorado River would flow into the Salton Trough and at other times it would flow into the Gulf of California. Periods in which the lakes formed would be interspersed with long intervals of drought, during which the lakes would dry up. Estimates indicate that the largest lakes existed over a period of between fifty and five hundred years, depending on the inflow. (SWRCB 5, pp. 75-76; PCL 2, p. 6; PCL 3, pp. 2-6, 28; R.T. pp. 1367, 1492, 1556, 1652.) Between A.D. 695 and A.D. 1580 there were three or four major lacustrine intervals in the Salton Trough, with more frequent minor events. The largest of the lakes formed in the Salton Trough was about 100 miles long, 35 miles wide, with a surface area of about 2100 square miles and a depth of over 300 feet. (PCL 2, p. 6; PCL 3, p. 4; PCL 8.) The most recent major filling of the Trough is estimated to have occurred in the period A.D. 1600-1700. (PCL 2, p. 6.)

There are other reports of the periodic presence of a lake in the Salton Trough during modern times. The source of this water is unknown, but during periods of heavy flooding, water may flow into the Salton Sink from the Colorado River via the New and Alamo Rivers to the south, from the Whitewater River to the north, from San Filipe Creek to the west, and from the Chuckawalla Wash to the northeast. There are anecdotal reports that water from the Colorado River flowed into the Salton Sink every few years during the period between 1840 and 1867. There is a report in 1848 of a lake in the Salton Sink that was three-quarters of a mile long, half a mile wide, and a foot in depth. By October of 1849, the lake had shrunk to a "series of small lagoons with no surface flow between them." (PCL 7, p. 49.) In June of 1891, a lake 30 miles long, ten miles wide, and six feet deep is reported as a result of flow from the Colorado River through the New River. By 1892, this lake is described as a salt marsh. (PCL 3, pp. 10, 18-19.) By 1900, the lake was dry and there were salt works at what is now the northerly end of the sea. (PCL 6, p. 10.)

In 1901, the California Development Company dug an irrigation canal to divert water from the Colorado River at a point just north of the international boundary between the United States and Mexico. The canal, much of whose length ran through Baja California in Mexico, delivered water to the Imperial Valley. Because heavy silt loads inhibited the flow of water into the canal, engineers created a cut in the western bank of the Colorado River in Mexico to allow more water to reach the valley. Heavy floodwaters broke through the engineered canal in the fall of 1905, and until February 1907 nearly all the river's flow rushed into the valley. By the time the breach was closed in 1907, an inland lake 45 miles long and 17 miles wide with a surface area of 410 square miles and a maximum depth of 83 feet was formed—the Salton Sea. (PCL 3, p. 5; PCL 6, p. 1.)

Based on evaporation rates of approximately 5.7 feet per year, it is clear that without a steady supply of water any lake formed in the Salton Trough would dry up in a relatively brief time. (R.T. pp. 1491, 1499, 1556, 1558-1559, 1564-1567.) Shortly after its formation, it was estimated that the Salton Sea would dry up in ten to twenty years. (PCL 3, pp. 5-6.)

Because the area has abundant sunshine and a secure water supply, a strong agricultural economy has developed in the Coachella and Imperial Valleys at the north and south ends of the Salton Trough, respectively. In July 1911, IID was formed, and by 1922, distribution canals formerly operated by 13 mutual water companies became part of the district system. In December 1928, the Boulder Canyon Project Act made possible the construction of Hoover Dam, Imperial Dam and the All-American Canal. Construction of the Imperial Dam and All-American Canal, commenced in 1934 and completed in 1942, provided sufficient capacity for development of all the lands within the boundaries of IID. The Coachella Canal, a branch of the All-American Canal, was constructed between 1938 and 1948 and delivers water to the Coachella Valley. (PCL 6, pp. 3-4.)

The flows in the Colorado River Basin exhibit wide annual variation. The development of dams and other facilities on the river has significantly dampened this natural variation by storing water for controlled releases. The combined storage capacity of facilities constructed by the U.S. Bureau of Reclamation (USBR) is about 60 million acre-feet. The operation of Hoover Dam in particular determines the hydrology in the lower basin today. Hoover Dam is operated to

meet downstream demands of California, Arizona, Nevada, and the United States' obligation under the U.S.-Mexico Water Treaty. Other dams on the river, including Davis, Parker, Headgate Rock, Palo Verde Diversion, Imperial, Laguna and Morelos Dams further reduce the flow of water to the Colorado River Delta. (IID 56, p. 3.1-18.) As a result of the operation of these facilities, the frequency and magnitude of flood flows on the lower Colorado River have significantly decreased over the last century. Dams have also decreased the river's siltload, further reducing the likelihood of flooding. (PCL 22, p. 2; PCL 3, p. 20.) The development of flood control and water supply improvement projects has altered the geofluvial morphology of the river, which historically resulted in the creation of water bodies in the Salton Trough. In the absence of human intervention, another natural inundation might have occurred. (PCL 22, p. 3; PCL 3, p. 20.)

Today, the Salton Sea is nearly entirely dependent on agricultural drainage flows, with the majority of these flows originating from IID. (R.T. pp. 743-744, 1498, 1527, 1553.) Beginning in 1923, IID constructed an extensive drainage system consisting of 1,456 miles of open and closed drains and thousands of miles of subsurface, or tile, drains. Most of the drains discharge to the Alamo or New Rivers, which in turn drain into the Salton Sea. (IID 55, p. 1-14; PCL 6, pp. 5-6.) The constant supply of nutrients and relatively fresh water inflows have allowed a vibrant, though precarious, ecosystem to become established in and around the Salton Sea. Because this lake has no outlet, all the salt and nutrients that flow into the Salton Sea continue to accumulate. The salinity of the Salton Sea is currently 25 percent higher than ocean water and the lake's salt load is growing by approximately 4,000,000 tons per year. (R.T. p. 1499.) As stated earlier, without a salinity control project, the Salton Sea will become too salty to support a viable fishery in approximately 11 to 58 years. (SSA 1, p. 7; R.T. pp. 853-858, 1624, 1642.)

## 2.0 PROCEDURAL BACKGROUND

### 2.1 Public Notice of the Petition

On July 22, 1998, IID and SDCWA filed with the SWRCB a Joint Petition for Approval of Long-Term Conserved Water Transfer Agreement and Change in Point of Diversion and Place of Use regarding Permit 7643. Later, petitioners amended the petition to add the request that municipal use be added as an authorized purpose of use under Permit 7643. The SWRCB issued a notice of the petition on October 15, 1998, giving interested parties until December 15, 1998 to protest the petition. The SWRCB granted a number of extensions to the deadline for submitting

protests to the petition. The final deadline for protesting the petition was September 22, 1999. Because the environmental document for the proposed transfer had not yet been released, the SWRCB informed parties who protested based on allegations that the project would impact the environment, would adversely affect the public trust, or was not in the public interest that it would allow the parties 90 days from the date that the draft environmental documents were released to submit supplemental information to support their protests. The SWRCB later waived the requirement that these parties supplement their protests prior to participating in the hearing.

## 2.2 Protests to the Petition

A protest to a petition for a long-term transfer may be based on an allegation that the proposed change will injure a legal user of water; that the proposed change will result in unreasonable effects to fish, wildlife or other instream beneficial uses; or that the proposed change is not in the public interest. (Wat. Code, § 1736; Cal. Code Regs., tit. 23, §§ 811, subd. (b), 796, 745.)

The SWRCB received 14 protests to the petition. Acceptable protests to the petition were filed by CVWD, MWD, Coastal Municipal Water District, Central Basin Municipal Water District and West Basin Municipal Water District, Municipal Water District of Orange County, the City of Los Angeles, the Colorado River Indian Tribes (CRIT), the County of Imperial, the Riverside County Farm Bureau, the California Farm Bureau Federation (CFBF), William DuBois, Larry Gilbert, and Cliff Hurley.

We consider the protestants who did not appear at the hearing to have abandoned their protests, and their protests are hereby dismissed. The unresolved protests of the following parties who did appear at the hearing are addressed by this order: CRIT, the County of Imperial, CFBF, William DuBois, and Larry Gilbert.

## 2.3 Water Rights Hearing

On December 11, 2001, IID and SDCWA filed a second amendment to their petition. The second amendment made changes to the petition consistent with a protest dismissal agreement reached between IID, SDCWA, CVWD, and MWD. The amendment reduced the amount of water proposed to be transferred to SDCWA to 200,000 afa, provided for acquisition of 100,000 afa of conserved water by CVWD or MWD and requested corresponding changes in the authorized place of use, point of diversion and purpose of use under Permit 7643. On

December 20, 2001, the SWRCB issued a Notice of Public Hearing and Notice of Amendment to the Long-Term Transfer Petition. The notice specified that a water right hearing on the amended petition would commence on April 23, 2002. In the notice, the SWRCB waived the requirement that parties file protests regarding the amended petition and, instead, directed parties who objected to the proposed amendments to the petition to file by February 25, 2002, a notice of intent to appear at the water right hearing on the amended petition. The SWRCB also notified parties that it would hold a pre-hearing conference on January 23, 2002, to discuss the scope of the hearing, the status of protests to the petition and other procedural matters.

At the pre-hearing conference, parties to the hearing made several requests regarding the conduct of the hearing. Because the comment period on the draft Environmental Impact Report (EIR) prepared by IID, the lead agency under the California Environmental Quality Act (CEQA), and on the draft Environmental Impact Statement (EIS) prepared by the USBR, the lead agency under the National Environmental Protection Act (NEPA), would not close until April 25, 2002, several parties requested the SWRCB to hold the hearing in phases. Phase I would address whether the transfer would result in substantial injury to any legal user of water, and Phase II would address whether the transfer would unreasonable affect fish, wildlife, or other instream beneficial uses. By holding the hearing in phases, the parties reasoned, the SWRCB could commence the hearing as scheduled and, at the same time, provide the parties with opportunity to review and comment on the draft environmental documents prior to the deadline for submission of evidence on matters related to the environmental effects of the proposed transfer. Parties also requested, among other things, that the SWRCB hold all or part of the hearing in Imperial County.

On February 5, 2002, the SWRCB issued a Revised Notice of Public Hearing and Amendment to Long-Term Transfer Petition. The Revised Notice made a number of changes to the December 11, 2001 Public Notice of Hearing. Principally, the revised notice specified that the hearing would commence on April 22, 2002, in Holtville California, with a session in which parties could provide policy statements to the SWRCB and that an interpreter would be available to translate the policy statement session into Spanish. The revised notice also specified that the evidentiary portion of the hearing would be held in two phases, as requested, with the first phase to commence on April 23, 2002, and the second phase to commence on April 30, 2002, in Sacramento, California.

The SWRCB held a hearing on the water transfer petition pursuant to the Notice of Public Hearing issued on December 20, 2001, and the revised Notice of Public Hearing issued on February 5, 2002. The hearing was held in two phases and took 15 days, which were scheduled between April 22, 2002, and July 16, 2002.

### 2.3.1 Key Issues for the Hearing

The February 5, 2002, Revised Notice of Public Hearing specified the following key issues should be addressed at the hearing:

Phase I

1. Is the amount of water that is proposed to be transferred water that will be conserved in accordance with Water Code section 1011?

2. Would the proposed transfer result in substantial injury to any legal user of water? (Wat. Code, § 1736.) The petitioners initially are responsible for showing that there will not be substantial injury to any legal user of water. If the petitioners make such a showing, however, and a party objects to the petitioned changes based on injury to existing water rights, the party claiming injury must present evidence demonstrating the specific injury to the existing water right that would result from approval of the transfer. In addition, the party claiming injury must present evidence that describes the basis of the allegedly injured party's claim of water right, the date the water use began, the quantity of water used during each relevant period of the year, the purpose of use, and the specific place of use.

3. Should the SWRCB make any additional findings or reach any additional conclusions concerning the transfer, IID's water rights, or IID's water conservation program, as requested by petitioners? Specifically, should the SWRCB make any of the following findings or conclusions?

    a. The SWRCB's order and all findings of fact and conclusions of law, with the exception of any decision, order, finding of fact or conclusion of law made with respect to standing or the right to appear or object, shall have no precedential effect

(as defined in the California Administrative Procedure Act) in any other proceeding brought before the SWRCB and, specifically but without limitation, shall not establish the applicability or nonapplicability of California law or federal law to any of the matters raised by the Petition or to any other Colorado River transfer or acquisition;

b. The SWRCB's concerns, if any, with respect to IID's reasonable and beneficial use, are satisfied;

c. The SWRCB does not anticipate the need, absent any substantial material adverse change in IID's irrigation practices or advances in economically feasible technology associated with irrigation efficiency, to reassess the reasonable and beneficial use of water by IID before the end of calendar year 2023;

d. Water Code sections 1011, 1012 and 1013 apply to and govern the transfer and acquisitions and IID's water rights are unaffected by the transfer and acquisitions;

e. The conserved water transferred or acquired retains the same priority as if it were diverted and used by IID;

f. The transfer and acquisitions are in furtherance of earlier SWRCB decisions and orders concerning IID's reasonable and beneficial use of water, California Constitution article X, section 2, and sections 100 and 109 of the Water Code; or

g. IID shall report annually on conservation of water pursuant to its Petition, and such annual reports shall satisfy reporting obligations of IID under Decision 1600 and Water Rights Order 88-20. The quantity of conserved water transferred or acquired will be verified by IID reporting that (i) IID's diversions at Imperial Dam (less return flows) have been reduced below 3.1 million afa in an amount equal to the quantity of conserved water transferred or acquired, subject to variation permitted by the Inadvertent Overrun Program adopted by the DOI; and (ii) IID has enforced its contracts with the participating farmers to produce conserved water and has identified

the amount of reduced deliveries to participating farmers and has identified the amount of conserved water created by projects developed by IID.

Phase II

4. Would the petitioned changes unreasonably affect fish, wildlife, or other instream beneficial uses of water? (Wat. Code, § 1736.) The petitioners initially are responsible for showing that there will be no unreasonable effect on fish, wildlife, or other instream beneficial uses of water. If the petitioners make such a showing, however, and a party objects to the transfer based on the claim that the transfer will unreasonably affect fish, wildlife, or other instream beneficial uses, the party must present evidence supporting the claim.

The issues addressed during each phase of the hearing relate to the two principal findings the SWRCB must make in order to approve the transfer. These required findings are discussed in section 3.7 of this order.

### 2.3.2 Parties

The parties who appeared at the hearing were: IID, SDCWA, the CRIT, Imperial County, the California Farm Bureau Federation, William DuBois, Larry Gilbert, the Salton Sea Authority, the Planning and Conservation League, the Sierra Club California, the Defenders of Wildlife, the National Wildlife Federation, the National Audubon Society-California, and the California Regional Water Quality Control Board─Colorado River Basin Region (Regional Board).

## 3.0 LEGAL BACKGROUND

### 3.1 Law of the River

The Law of the River consists of a variety of legal authorities concerning the use and distribution of Colorado River water, including treaties, interstate compacts, federal and state statutes, and case law.

A central component of the Law of the River is the 1922 Colorado River Compact. The 1922 Compact apportions the beneficial consumptive use of 7,500,000 afa of water from the Colorado River System to the Upper Basin States of Arizona, Colorado, New Mexico, Utah, and

Wyoming, and the beneficial consumptive use of 7,500,000 afa to the Lower Basin States of Arizona, California, Nevada, New Mexico and Utah.[3] (1922 Colorado River Compact, art. III, para. (a).) The 1922 Compact did not apportion water among the states within the Upper and Lower Basins.

In 1928, Congress enacted the Boulder Canyon Project Act (43 U.S.C.A. § 617 et seq.) (Project Act), which authorized construction of Hoover Dam and the All-American Canal. The purposes of the Project Act were to control floods, improve navigation, regulate the flow of the river, store and deliver water for beneficial uses, and generate electric power. (43 U.S.C.A. § 617.) Section 5 of the Project Act also authorized the Secretary of Interior to enter into contracts for the storage and delivery of Colorado River water. (43 U.S.C.A. § 617d.)

In *Arizona v. California*, the U.S. Supreme Court interpreted the Project Act to have effectuated the apportionment of the Lower Basin States' 7,500,000 afa share of water from the mainstream of the Colorado River among California, Arizona and Nevada as follows: 4,400,000 afa to California, 2,800,000 afa to Arizona, and 300,000 afa to Nevada. (*Arizona v. California* (1963) 373 U.S. 546, 564-565 [83 S.Ct. 1468, 1480].) The Court held that California was also entitled to half of any surplus. (*Ibid*.)

The Court held that the Project Act authorized the Secretary of Interior to carry out the apportionment among the Lower Basin States and to decide which users within each state would get water, through contracts made under section 5 of the Project Act. (*Arizona v. California, supra,* at pp. 579-580.) The Court stated that the Project Act established a comprehensive scheme for the distribution of Colorado River water pursuant to section 5 contracts. The Court stated further that this scheme left no room for inconsistent state law, but that States are free "to do things not inconsistent with the Project Act or with federal control of the river . . . ." (*Id.* at pp. 587-588.)

The Court also emphasized that a significant limitation to the Project Act was the requirement that the Secretary of Interior satisfy "present perfected rights." (*Arizona v. California, supra,* at p. 584.) In a subsequent decree, the Court defined present perfected rights as those rights that

[3] Article III, paragraph (b) of the 1922 Compact apportions an additional 1,000,000 afa to the Lower Basin States.

had been perfected in accordance with state law as of June 25, 1929, the effective date of the Project Act. (*Arizona v. California* (1964) 376 U.S. 340, 341 [84 S.Ct. 755, 756].) The Court then quantified present perfected rights, including present perfected rights held by IID. (*Arizona v. California* (1979) 439 U.S. 419, 429 [99 S.Ct. 995, 1000].)

In 1931, water users within California entered into the Seven-Party Agreement, which establishes a priority system for the use of Colorado River water. Under the Agreement, the parties have the following priorities to the following quantities of water:

| Priority | Description | Acre-feet per year |
|---|---|---|
| 1 | Palo Verde Irrigation District gross area of 104,500 acres | 3,850,000 |
| 2 | Yuma Project not exceeding a gross area of 25,000 acres | |
| 3(a) | IID and lands in Imperial and Coachella Valleys to be served by the All-American Canal | |
| 3(b) | Palo Verde Irrigation District 16,000 acres of mesa lands | |
| 4 | MWD and/or the City of Los Angeles and/or others on the coastal plain | 550,000 |
| 5(a) | MWD and/or the City of Los Angeles and/or others on the coastal plain | 550,000 |
| 5(b) | City and/or County of San Diego | 112,000 |
| 6(a) | IID and lands in Imperial and Coachella Valleys | 300,000 |
| 6(b) | Palo Verde Irrigation District 16,000 of mesa lands | |
| 7 | Agricultural Use | All remaining water |

The Seven-Party Agreement makes allocations for "lands in Imperial and Coachella Valleys," and sets acreage limits for Palo Verde Irrigation District (PVID) and the Yuma Project, but does not otherwise quantify the individual entitlements of the agricultural users with the first, second and third priorities. The first four priorities combined amount to the 4,400,000 afa apportioned to California under *Arizona v. California*, *supra*. Water may be available under lower priorities when surplus water is available or higher priority users do not use their full entitlement.

### 3.2 The Need To Reduce California's Use of Colorado River Water

California has been using approximately 5,200,000 afa of Colorado River water. This use is in excess of California's basic apportionment of 4,400,000 afa by approximately 800,000 afa. (SDCWA 15, p. 16.) In the past, Arizona and Nevada were not using their full apportionments, and California could take the surplus. (*Ibid*.) Growing demand in Arizona and Nevada,

however, has placed pressure on California to reduce its use to its 4,400,000 afa apportionment during years when no surplus is available. (*Ibid*.)

### 3.3 California's Colorado River Water Use Plan

California's Colorado River Water Use Plan (SDCWA 15) provides a framework to assist California in reducing its use of Colorado River water to 4,400,000 afa in normal years. The Plan, currently in draft form, was developed by the Colorado River Board of California.[4] Components of the Plan include canal lining projects, groundwater storage and consumptive use projects, and conserved water transfers. A self-described linchpin of the Plan is the voluntary transfer of between 400,000 to 500,000 afa of conserved water from agricultural to urban use, including the proposed transfer from IID to SDCWA. (*Id*. at pp. 25, 32-37.) Although the Plan contemplates that conserved water transfers, including the transfer to SDCWA, will take place in the near term, the Plan is also intended to be flexible, and to allow for the addition, deletion, or substitution of projects or programs where doing so is cost-effective or otherwise appropriate. (*Id*. at pp. 20, 27, 34.)

### 3.4 The Draft Quantification Settlement Agreement

The Quantification Settlement Agreement (QSA), a draft agreement between IID, MWD and CVWD, would facilitate implementation of the Colorado River Water Use Plan by settling "longstanding disputes regarding the priority, use and transfer of Colorado River water . . . ." (IID 22, p. 2, para. G.) The Colorado River Water Use Plan recognizes that the structure of the Seven-Party Agreement presents a potential obstacle to conserved water transfers from IID to urban users such as SDCWA. (SDCWA 15, pp. 25-26.) Before entering into a protest dismissal agreement with IID and SDCWA, CVWD protested the transfer on the basis that CVWD was entitled to any water conserved by IID, even if the water were conserved in support of a transfer to a third party, under CVWD's unquantified third and sixth priority entitlements. (CVWD protest (Sept. 23, 1999) pp. 6-7; see also R.T. pp. 76-77, 139-140.) Similarly, MWD protested on the basis that it was entitled to any water unused by IID and CVWD because MWD is next in

[4] The Colorado River Board is a state agency that exists within the California Resources Agency. There are 10 members: one from each of the six major public agencies with Colorado River water rights (City of Los Angeles Department of Water and Power, CVWD, IID, MWD, PVID, and SDCWA); two from the general public; the Director of the California Department of Water Resources; and the Director of the California Department of Fish and Game. (SDCWA 15, p. 1.)

line in the priority system. (MWD protest (Sept. 21, 1999) attachment B.) The terms of the draft QSA would resolve this conflict among the parties.

Among other things, the QSA would establish water budgets for the parties, and sanction the proposed transfer from IID to SDCWA. Specifically, the QSA would cap IID's third priority entitlement at 3,100,000 afa; CVWD's third priority entitlement would be capped at 330,000 afa, plus 100,000 afa of conserved water from IID. In addition to capping MWD's entitlements consistent with the Seven-Party Agreement, the QSA would authorize MWD to acquire all or a portion of the 100,000 afa of conserved water that CVWD does not use. (IID 22, pp. 9-13; see also SDCWA 15, pp. 33-36.) The QSA would measure the proposed transfer to SDCWA against IID's 3,100,000 cap. The parties' obligations under the draft QSA are contingent on the SWRCB approving IID's and SDCWA's petition, and adopting specified findings and conclusions concerning IID's water use and the precedential nature of the SWRCB's order. (IID 22, pp. 19-20, para. 6.1, p. 23, para. 6.2(11)(a-e).)

### 3.5 The Interim Surplus Guidelines

In January 2001, the Secretary of Interior adopted Interim Surplus Guidelines. (66 Fed.Reg. 7772.) For a 15-year period, the Guidelines provide for the phase-out of the availability of surplus water, which may be used when demand within California exceeds California's basic 4,400,000 afa apportionment. (*Ibid*; R.T. pp. 128-129.) The Guidelines give California time to reduce its use of Colorado River water in accordance with the Colorado River Water Use Plan and the draft QSA.

The Guidelines require California to reduce its water use to levels at or below specified benchmark water quantities every three years, starting with 2003. (66 Fed.Reg 7772, § 5(C).) The Guidelines will be suspended, and surplus water is much less likely to be available, if California exceeds a benchmark quantity, but the Guidelines will be reinstated if California meets the missed benchmark quantity before the next benchmark date. (*Ibid*.) In addition, the Guidelines will be suspended if IID, MWD, and CVWD do not execute the draft QSA by December 31, 2002. The Guidelines will remain suspended "until such time as California completes all required actions and complies with [the benchmark water] reductions . . . ." (*Id*., § 5(B).)

### 3.6 Previous SWRCB Decisions Regarding IID's Water Use

In previous decisions, the SWRCB has addressed the need for IID to conserve more water. In 1983, the SWRCB held a hearing on a complaint against IID filed by John Elmore, a farmer with land adjacent to the Salton Sea. Mr. Elmore alleged that IID's water use was wasteful and unreasonable because agricultural run-off from IID was causing the level of the Salton Sea to rise and flood adjacent property. After considering all relevant facts - including the impending shortage of Colorado River water and the availability of practical conservation measures - the SWRCB determined that IID's failure to implement additional water conservation measures was unreasonable and constituted a misuse of water in violation of article X, section 2 of the California Constitution and section 100 of the Water Code. (Decision 1600 (1984) p. 66.) Decision 1600 directed IID to take certain actions to increase water conservation, including the development of a comprehensive water conservation plan.

The SWRCB held hearings in 1987 and 1988 regarding various aspects of IID's conservation efforts and adopted Order WR 88-20. Order WR 88-20 directed IID to submit a plan for implementing conservation measures sufficient to conserve at least 100,000 afa. The SWRCB addressed the lack of funding to implement all of the conservation measures that IID had identified during the hearing and pointed to conserved water transfers as a potential source of funding. (*Id*. at pp. 18-26.) The SWRCB reserved continuing authority to oversee implementation of IID's conservation plan and take any other appropriate action to ensure compliance with article X, section 2 of the Constitution.

In accordance with Order WR 88-20, in 1988 IID entered into a conservation agreement with MWD, whereby, in exchange for funding to support IID's conservation efforts, MWD would acquire approximately 100,000 afa of conserved water. (IID 15.) In this proceeding, IID seeks to resolve any outstanding issues concerning the reasonableness of its water use. IID has requested the SWRCB to find that the SWRCB's concerns, if any, concerning IID's reasonable and beneficial use are satisfied.

### 3.7 State Law Applicable to Conserved Water Transfers

Water Code sections 1735 through 1737 govern the SWRCB's review of changes in permitted points of diversion, place of use or purpose of use for water transfers for periods in excess of one year. Under Water Code section 1736, the SWRCB may approve a long-term transfer petition

if the SWRCB finds that the transfer will not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.[5]

A number of other provisions may come into play when water is conserved for purposes of a transfer. Ordinarily, when an appropriative water right is not exercised for a proscribed amount of time, the right is subject to forfeiture for non-use. (See Wat. Code, § 1241.) To the extent that water is being used in accordance with a valid water transfer, however, this provision does not apply because the water is being used. A section recently added to the Water Code codifies this principle, specifying that a transferor's right to use the water transferred is protected from forfeiture due to non-use, provided that the transfer is implemented in accordance with applicable law. (Wat. Code, § 1745.07.)

Section 1011 protects from forfeiture the right to use water under an appropriative right to the extent that the right holder uses less water as a result of conservation efforts. The right to use water that is conserved may be transferred pursuant to other provisions of law governing transfers. (Wat Code, § 1011, subd. (b).) For purposes of section 1011, "water conservation" is defined as the use of less water to accomplish the same purpose or purposes of use. The term "water conservation" is also defined to include temporary "land fallowing" and "crop rotation," which in turn are defined to mean land practices "used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land." (Wat. Code, § 1011, subd. (a).) Section 1011 protects the right holder from forfeiture, even if the water is not transferred. If the water right holder carries out a transfer, it is protected from forfeiture under Water Code section 1745.07, even if the measures employed to make water available for transfer include measures, such as land retirement, that do not constitute "water conservation" as defined in section 1011.

IID has requested the SWRCB to find that Water Code sections 1011, 1012, and 1013 apply to and govern IID's conservation of water in support of the proposed transfer. Consistent with section 1011, section 1012 protects IID's rights from forfeiture to the extent that any conservation effort results in the reduction of water use within IID. Section 1013 provides

[5] Although Water Code section 1736 applies more broadly to water bodies that are not navigable and do not support a fishery, section 1736 effectively codifies the SWRCB's duty to consider public trust uses. (See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 447, fn. 27 [189 Cal.Rptr. 346, 364, fn. 27, 658 P.2d 709, 728, fn. 27].) Accordingly, we need not reach the argument advanced by some parties to this proceeding that the public trust doctrine applies to the Salton Sea.

that if IID, acting under contract with the United States or pursuant to State or federal requirements, reduces through conservation measures inflows to the Salton Sea, IID shall not be liable for any resulting effects to the Salton Sea or its bordering area.

Effective January 1, 2003, Senate Bill 482 (Stats. 2002, ch. 617) will amend section 1013 to extend the protection against forfeiture to a reduction in water use attributable to temporary or long-term land fallowing, regardless of whether it occurs in the course of normal and customary agricultural production, if the fallowing is undertaken in order to carry out or mitigate for a transfer under the QSA and IID obtains Imperial County's assessment of the economic or environmental impacts of fallowing. (*Id*., § 7.)

### 3.8 Endangered Species Act Requirements

The conservation and transfer project has the potential to "take" certain threatened and endangered species that are protected under the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544) (ESA) and the California Endangered Species Act (Fish & G. Code, §§ 2050-2116) (CESA).

Under the federal ESA, the Secretary of Interior may permit the taking of a threatened or endangered species if the Secretary finds, among other things, that the taking will be incidental to an otherwise lawful activity, the impacts of the taking will be minimized and mitigated to the extent practicable, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. (16 U.S.C.A. § 1539(a).) CESA contains similar provisions. The California Department of Fish and Game (DFG) may issue a permit that authorizes the incidental take of a species listed as threatened or endangered under CESA, provided, among other things, that the impacts of the take will be minimized and fully mitigated, and the issuance of the permit will not jeopardize the continued existence of the species. (Fish & G. Code, § 2081, subds. (b) & (c).)[6] IID has developed a habitat conservation plan (HCP) in support of its applications for incidental take permits under section 10(a)(1)(B) of the federal ESA (16 U.S.C.A. § 1539(a)(1)(B)) and section 2081, subdivision (b) of the Fish and Game Code. (IID 93, attachment A.)

[6] Under Fish and Game Code section 2835, DFG may also authorize the incidental take of any species whose conservation and management is provided for in a natural community conservation plan (NCCP) that has been approved by DFG. Effective January 1, 2003, chapter 10 of division 3 of the Fish and Game Code (sections 2800-2840), which governs the preparation and implementation of NCCPs, will be repealed and replaced with much more detailed provisions governing NCCPs, but section 2835 will remain substantially unchanged. (Stats. 2002, ch. 4, §§ 1 & 2.)

Effective January 1, 2003, SB 482 adds a new section 2081.7 to the Fish and Game Code. Section 2081.7 will authorize DFG to issue an incidental take permit in connection with implementation of the QSA, including the transfers authorized under the QSA, under specified conditions. (Stats. 2002, ch. 617, § 2.) Section 2081.7 will authorize the incidental take of affected species even if they are listed as fully protected under the Fish and Game Code. (*Id*., §§ 2-6.) Unlike species listed as threatened or endangered under CESA, under current law DFG lacks authority to authorize the incidental take of a fully protected species.

## 4.0 THE TRANSFER WILL NOT RESULT IN SUBSTANTIAL INJURY TO ANY LEGAL USER OF WATER

As stated earlier, Water Code section 1736 provides that the SWRCB may approve a long-term transfer petition if the SWRCB finds that the transfer will not result in substantial injury to any legal user of water. For the reasons described below, the SWRCB concludes that the transfer will not result in substantial injury to any legal user of water.

The statutory "no injury" rule, set forth in Water Code section 1702 and followed in section 1736, codifies the common law no injury rule and therefore should be interpreted consistent with the common law rule. (SWRCB Order WR 98-01, p. 5; SWRCB Order WR 99-012, p. 12.) The common law rule is designed to protect third party water right holders when a water right is changed. (SWRCB Order WR 2000-02, p. 19.) The rule precludes a change in the point of diversion, place of use, or purpose of use under circumstances where prior rights would bar issuance of a new permit for a project having the same impacts as the change. The Water Code requirement that there be no "injury" from changes or transfers is a term of art that does not necessarily protect every third party who is using water legally. In order to be protected under the no injury rule, a third party must be a water right holder, or have standing to raise issues concerning injury to a water right holder.[7] (*Id*. at pp. 19-21; see Wat. Code, § 1703.6, subd (c) [authorizing the SWRCB to dismiss a protest based on injury to a legal user of water if the protestant fails to submit information necessary to determine if the protestant has a valid water right].)

[7] For example, a water supply contractor who buys water from a water right holder would have standing if a change would deprive the water right holder of water to which it is entitled, without its consent, thereby reducing the contractor's receipt of water. (SWRCB Order WR 2002-02, p. 20.)

The transfer will reduce flows in the lower Colorado River between Parker Dam, the point of diversion for the water proposed to be transferred to SDCWA and MWD, and Imperial Dam, IID's existing point of diversion. Reduced flows between Parker Dam and Imperial Dam have the potential to injure water right holders who divert water from that stretch of the river. The transfer will also reduce flows in the All-American Canal, which has the potential to injure third party water right holders who divert water from the canal (instead of diverting directly from the lower Colorado River) between Imperial Dam and IID's points of rediversion from the canal. (See IID 2, ex. B, pp. VII-1 - VII-9.)

The record establishes, however, that the transfer will not result in substantial injury to any third party water right holder. No third party submitted evidence to support an objection to the transfer based on injury to the right to use water for consumptive use purposes. In addition, the record indicates that, even with full implementation of the transfer, IID will continue to divert a substantial amount of water at Imperial Dam and to redivert the water from the All-American Canal. (IID 54, p. 15; IID 55, pp. [2-2]-[2-8]; R.T. pp. 669-676.) Accordingly, water right holders located upstream of IID necessarily will be able to satisfy their rights to divert water for consumptive use purposes.

The only party who objected to the transfer based on injury to the right to use water for non-consumptive use purposes was the CRIT. CRIT presented evidence that the transfer will adversely affect CRIT's ability to generate hydroelectric power at the Headgate Rock Power Plant, a run-of-the-river hydroelectric facility located downstream from Parker Dam. Evidence presented by CRIT indicates that the transfer could reduce generation by approximately four or five percent. (CRIT 9, pp. 4-5; R.T. pp. 451-452.) The value of the lost power generation is approximately $150,000 a year. (*Ibid*.)

Although CRIT's ability to generate power may be affected, CRIT failed to claim or present any evidence substantiating a claim that CRIT holds a water right for purposes of generating hydroelectric power that would entitle CRIT to protection from injury under Water Code section 1736. The SWRCB afforded CRIT ample opportunity to substantiate a water right claim. The SWRCB's February 6, 2002, hearing notice specified that any party who objected to the transfer based on the allegation that the transfer would result in substantial injury to a legal user

of water must present evidence that described the basis of the allegedly injured party's claim of water right. In addition, in a letter to CRIT dated May 14, 2002, SWRCB Chairman Baggett, the hearing officer in this proceeding, explained that CRIT would not be entitled to protection from injury to the extent that CRIT did not hold a water right. Chairman Baggett asked CRIT whether CRIT claimed to hold specific types of water rights and provided CRIT an opportunity to respond and submit evidence in support of any response.

In a May 21, 2002, response to the Chairman's May 14, 2002 letter, CRIT reiterated that CRIT is entitled to use the entire flow of the river to generate power by virtue of the fact that Congress authorized and funded the construction of Headgate Rock Dam for purposes of irrigation and power generation. CRIT also cited to evidence in the record that indicates that the USBR designed Headgate Rock Power Plant to utilize the entire, normal flow of the river, and Congress appropriated money to construct the power plant. CRIT has presented no evidence, however, that Congress granted CRIT a water right for purposes of power generation. The evidence cited by CRIT establishes merely that CRIT is entitled to generate electricity from all of the water that happens to be in the river. CRIT provided no evidence that Congress granted CRIT any right to the maintenance of any flows in the Colorado River to support that use. Nor did CRIT present evidence that it holds any reserved, riparian, appropriative, or other water right for power generation that would constitute a prior right, entitled to protection from diminution in supply, if a new a new appropriation were proposed upstream. Accordingly, CRIT is not entitled to protection under the no injury rule codified in Water Code section 1736.

## 5.0 THE TRANSFER WILL NOT RESULT IN UNREASONABLE IMPACTS TO FISH, WILDLIFE, OR OTHER INSTREAM BENEFICIAL USES

Under Water Code section 1736, the SWRCB may approve the transfer if the SWRCB finds that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. The transfer has the potential to affect fish and wildlife present in and around IID's service area, the Salton Sea, the lower Colorado River, and the San Diego region. Most of the concern expressed by the parties relates to potential impacts to the Salton Sea fishery and migratory birds that rely on the fishery.

IID proposes to conserve water for transfer by improving its water delivery system, promoting and financing on-farm irrigation system improvements, or fallowing agricultural land. IID has

not specified the precise mix of conservation measures that it will rely on to generate water for transfer. Depending on how water is conserved, the impacts of the project on the Salton Sea and habitat within IID's service area will vary.

Water that flows into the Salton Sea from the IID service area is less saline than water in the Sea. As a result, IID's drainage water provides dilution for the salts that accumulate when the Sea's water evaporates. All of IID's proposed conservation measures that reduce farm runoff will reduce inflows to the Salton Sea and the Sea will become more saline at an accelerated rate. Fallowing agricultural land also affects inflows to the Sea, but to a lesser extent. Fallowing has about one-third of the effect on Salton Sea inflow as compared to a conservation program based on efficiency improvements. As the Sea becomes more saline, the fish that are present in the Sea will become less able to reproduce, the fishery will eventually collapse, and migratory birds will lose a significant food source. In addition, reduced inflows will lower the elevation of the Sea, which could adversely affect shoreline habitat and expose island rookeries.

Some of the species that could be adversely affected by the transfer, including some of the bird species that rely on the Salton Sea, are listed as threatened or endangered under CESA and the federal ESA. As lead agency under CEQA, IID has prepared an EIR, which analyzes the potential impacts of the project on the environment, including the Salton Sea. (IID 55 [Draft EIR]; IID 93 [Final EIR].) As stated in section 3.8 of this order, IID also has prepared an HCP in support of its applications for permits that would authorize the incidental take of these species in connection with the transfer. (IID 93, attachment A.) The HCP includes a Salton Sea Habitat Conservation Strategy (SSHCS), which proposes to mitigate the impacts of the transfer on the Salton Sea by generating water in some fashion to replace water that will no longer flow to the Sea as a result of the proposed transfer. The replacement water is intended to maintain salinity at levels that would have occurred in the absence of the transfer. The SSHCS proposes to provide replacement water until 2030, the year when the Sea is projected to become so salty under baseline conditions that fish will no longer be able to reproduce. The amount of water that will need to be replaced depends on the final combination of conservation measures that IID implements.

Conservation measures also have the potential to adversely affect fish and wildlife that are present in the drains in IID's service area. In addition, reduced flows between Lake Havasu and Imperial Dam could adversely affect fish and wildlife that rely on the river or adjacent habitat.

For the reasons described below, we find that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses provided that the mitigation measures required by this order are implemented. In particular, we find that the impacts to fish and wildlife that rely on the Salton Sea are reasonable given the importance of the transfer to the State, so long as IID implements the SSHCS for 15 years.[8]

## 5.1 Impacts to Fish and Wildlife that Rely on Drain Habitat

IID maintains approximately 1,456 miles of drains in its service area, most of them in the form of open, unlined channels. These channels create habitat for a variety of plant species. (IID 55, p. 3.2-24.) Vegetation is the key habitat feature that attracts wildlife to the drains in the IID service area. Vegetation occurs along approximately 26 percent of the total area covered by the drains (2,471 acres) for a total potential habitat of 652 acres. (IID 93, p. A3-94.) The majority of vegetation in the drains consists of invasive, non-native phreatophytes (589 acres), but some sporadic patches of cattail also exist (63 acres). A number of avian species, including special status avian species, use this vegetation for cover, nesting and perching habitat. They also use this habitat for foraging for invertebrates and fish. (IID 93, pp. A3-100-112.) Drains in the IID service area that empty directly into the Salton Sea also serve as habitat for desert pupfish, a species listed as endangered under CESA and the federal ESA. (IID 55, p. 3.2-128.)

### 5.1.1 Existing Water Quality Conditions in the Drains

The average salinity (expressed as Total Dissolved Solids, "TDS") of water diverted by IID at Imperial Dam is 768 mg/l. (IID 55, p. 3.1-17.) This value is expected to increase to 879 mg/l due to changes in water use patterns in upstream areas of the Colorado River. (R.T. pp. 675, 921.)

[8] Although providing replacement water in accordance with the SSHCS will be a condition of approval that is binding on IID, we do not mean to imply that IID necessarily must supply the replacement water under its own water rights in order to satisfy this requirement. Consistent with the provisions of the SSHCS, which does not specify the source of replacement water, IID may satisfy this requirement using water from other sources. Moreover, the imposition of this requirement on IID is not intended to and should not be construed as a determination of the proper allocation of responsibility for mitigating the environmental impacts of the transfer as between IID and SDCWA, or a determination of the extent to which it may be appropriate for IID to obtain assistance in meeting mitigation requirements from federal or state grants or from any other third party. Similarly, any references in this order to required mitigation measures are not intended to be read as requirements that IID provide the funding for the mitigation, or that IID must itself implement the mitigation. Mitigation may be paid for or implemented by a party other than IID pursuant to the IID/SDCWA transfer agreement, the QSA, or any other agreement. The mitigation measures required by this order must be funded and implemented if petitioners choose to proceed with the transfer, irrespective of who pays for or implements the mitigation.

This water makes its way to the IID service area through the All-American Canal, and is delivered to farmers' headgates with nearly the same average TDS. By the time farmers have used the water to irrigate crops and returned the tail and tile water to IID drains, the average TDS is approximately 2245 mg/l. The New and Alamo Rivers water that crosses the border from Mexico is of substantially poorer quality than IID drain water at 3542 mg/l. (See IID 55, p. 3.1-56.) When IID drain water is mixed with New and Alamo Rivers water, the resulting flow into the Salton Sea averages 2727 mg/l. Because the salinity of IID's source water is expected to increase, it is logical to assume that the salinity of drain water will also increase. (R.T. pp. 675-676, 921-922.)

The difference between the TDS value of Colorado River water (768 mg/l) and the TDS value of drain water (2245 mg/l) is mainly the result of salt that is leached from agricultural fields in IID. Tile water is the major contributor to the increase of salinity in the drains, because this water serves the important function of removing salt that accumulates in the root zone from previous irrigations. (R.T. pp. 195-196, 205-206.)

Colorado River water imported into the Imperial Valley also contains high levels of selenium that originates from areas upstream of IID's diversion point, principally from irrigation tail water that is discharged to the river in Colorado. (IID 55, p. 3.2-73; R.T. p. 1227.) Selenium (Se) is a metalloid that can be highly toxic to aquatic life at relatively low concentrations, but it is also an essential trace nutrient for many aquatic and terrestrial species. The biogeochemistry of selenium is complex in the aquatic environment. Selenium exists in four oxidation states in the aquatic environment, each state displaying different toxicological and chemical properties. Selenium bioaccumulates in aquatic food webs and can undergo rapid biotransformation between its inorganic and organic forms, which affects its bioavailability and toxicity. Selenium toxicity causes reproductive failure in adult fish and birds and also causes teratogenesis in juveniles. Selenium is released to water from both natural and anthropogenic sources. (See IID 56, p. 3.1-8; 61 Fed.Reg. 58446 (Nov. 14, 1996); 65 Fed.Reg. 31689, 31690 (May 18, 2000).)

The Regional Board adopted a Water Quality Control Plan for the Colorado River Basin Region (Basin Plan) in 1993. The SWRCB approved the Basin Plan in 1994. The Basin Plan identifies beneficial uses for the Salton Sea, which include aquaculture, water contact and non-contact recreation, warm freshwater habitat, wildlife habitat, and preservation of rare, threatened or

endangered species. The Basin Plan contains the following water quality standards for the Salton Sea and its tributaries for selenium:

1. A four day average value of selenium shall not exceed 0.005 mg/l [5 µg/L];
2. A one-hour average value of selenium shall not exceed 0.02 mg/l [20 µg/L].

The water quality standards for selenium specified in the Basin Plan are based on the U.S. Environmental Protection Agency's (USEPA) National Ambient Water Quality Criteria. (R.T. pp. 1209, 1219; see also Regional Water Quality Control Board, Water Quality Control Plan, Colorado River Basin Region (1994).) The USEPA criteria for selenium is 5 µg/L for freshwater and 71 µg/L for saltwater. The most recent aquatic criteria for selenium were derived by the USEPA in 1987. USEPA is currently in the process of revising its national freshwater aquatic life criteria for selenium. (64 Fed.Reg. 58409 (Oct. 29, 1999).) Although USEPA recognizes the need to review saltwater aquatic life criteria for selenium, information concerning selenium effects on saltwater organisms is limited compared to freshwater.

The Basin Plan identifies recreation as a beneficial use of water that has been impaired due to elevated levels of selenium in tissues of resident wildlife and aquatic life. As a result, the Regional Board pursuant to the Clean Water Act has identified the Salton Sea, the Alamo River and Imperial Valley agricultural drains as impaired water bodies for selenium. The Salton Sea currently meets the Basin Plan's water quality objective for selenium, but that objective is exceeded in the Alamo River and the agricultural drains that are tributary to the Salton Sea and to the New River. (R.T. p. 1220.)

### 5.1.2 Project Impacts to Water Quantity and Water Quality in the Drains

Any conservation strategy that reduces agricultural discharge has an effect on the quantity and quality of water flowing in IID's drainage system, which can in turn affect the plants and animals that live there.

In the case of on-farm measures, almost all techniques used to conserve water result in reduced tail water flows, which would impact the quantity and quality of IID's run-off. The current volume of tail water and tile water from IID is approximately equal (IID 93, pp. A2-3 - A2-4),

but tail water is of much better quality than tile water. For example, tail water in the IID service area has approximately 15 percent of the total selenium concentrations of tile water. (CRWQCB 4.) If the proportion of tail water is reduced by on-farm conservation, the remaining tile water will make up a larger proportion of water flowing through IID drains and water quality will worsen. While the selenium concentration in many drains in the IID service area will be at or above 5 µg/L with or without any transfer project, on farm conservation measures would increase the number of miles in the IID system that would exceed this objective. (R.T. p. 1221.)

Conservation measures that reduce losses from the irrigation water delivery system can affect water quantity in two ways. Currently, water sometimes "spills" into drains when more water is delivered than is needed. The effects of reducing canal spills are similar to those that would result from on-farm conservation measures because the net result would be reduced flows in IID's drains and in the New and Alamo Rivers. If water is conserved by reducing seepage from unlined ditches, the result would be either reduced base flows in IID's drains and the New and Alamo Rivers, or reduced subsurface flows to the Salton Sea. This would diminish the dilution effect that inflows have on the Sea. In either case, the effect on the quantity of water flowing in either IID's drains, the New and Alamo Rivers, or subsurface flow to the Salton Sea would not be seen immediately, because water flows very slowly in the subsurface. (R.T. p. 674.) But witnesses for IID testified that this type of conservation would eventually have the same result on the quantity of flows as would on-farm conservation. (R.T. p. 686.)

If water for the transfer is generated by temporary land fallowing, the effects on water quality in IID's drains and the Salton Sea would be expected to be less significant, equating to roughly one-third of the impact (in terms of water quality constituents) from on-farm conservation. (R.T. p. 698.) Fallowing agricultural fields in IID to provide water for transfer has less impact on the Salton Sea and its tributaries than using strictly conservation measures to generate a like volume of water. For every acre-foot of transfer water generated through the use of on-farm and system improvements, the Sea loses an acre-foot of inflow. When fallowing is used to generate transfer water, for every three acre-feet of water transferred, the Sea only realizes a one acre-foot loss.

### 5.1.3 Project Impacts to Fish and Wildlife that Rely on Drain Habitat

By implementing conservation measures that will provide water for the transfer, IID may reduce flows in agricultural drains by 7 percent to 39 percent, depending on the location of the drain and type of conservation measure. Reduced flows can cause water temperatures in affected drains to increase to the extent that the drain becomes unsuitable to support aquatic invertebrates. When flows are reduced, fish that live in the drains, such as the desert pupfish can be exposed, resulting in increased predation. Their movement can also be restricted to the point that their range is reduced.

Conservation measures would also affect vegetation, and thus bird habitat, in IID's drains. The greatest threat to the vegetation is rising salinity due to the increased proportion of tile water generated by on-farm conservation measures. Table 3.2-39 of the EIR illustrates the effects of the transfer on rising salinity for different conservation measures that may be utilized by IID. Conserving water for transfer by fallowing only would have a minor effect on vegetation, due to reduced flows in the drain.

**TABLE 3.2-39**
Acres of Cattail Vegetation in the Drains Potentially Affected by Increases in Salinity under the Proposed Project and Alternatives

| Alternative | Good Growth (salinity < 3 g/L) | Stunted Growth (salinity 3-5 g/L) | Total Cattail Vegetation |
|---|---|---|---|
| Baseline (Alt 1) | 40 | 23 | 63 |
| 130 KAF on-farm (Alt 2) | 30 | 32 | 62 |
| 230 KAF on-farm (Alt 3) | 20 | 39 | 59 |
| 130 KAF on-farm + 100 KAF system (Alt 3) | 19 | 41 | 60 |
| 230 KAF on-farm + 70 KAF system (Proposed Project) | 13 | 46 | 59 |

(IID 55, p. 3.2-115.)

As discussed above, selenium concentration in the drains and in the Alamo and New Rivers may increase as a result of conservation measures. Increased concentrations of selenium due to reduced flows in the drains and rivers could contribute to reproductive failure and teratogenesis in birds and fish. Impacts to breeding birds could include decreased egg hatchability and embryo deformity. (R.T. p. 2429.)

### 5.1.4 The Drain Habitat Conservation Strategy

IID's HCP includes a Drain Habitat Conservation Strategy (DHCS), which mitigates the impacts of altering the quantity and quality of drainage water in its system. The strategy is to analyze the effects of different conservation measures and create managed marsh habitat to compensate for any detrimental water quality effects, up to a maximum of 652 acres. The full habitat replacement project would take place over a period of 15 years. In essence, the DHCS intends to replace all habitat in IID drains as the proposed project is phased into place. The water used to sustain the created habitat will be of equal or better quality than lower Colorado River water diverted by IID for irrigation purposes.

### 5.1.5 Conclusion on Drain Habitat Impacts

We recognize that the selenium concentration in existing drains will not be reduced as a result of implementing this mitigation measure, and impacts associated with high selenium concentrations in the drains and outlets to the Salton Sea will still occur. However, by creating alternative habitat with better water quality, the combined reproductive output of wildlife in the drains plus the alternate habitat will not change.

To protect the species that rely on drain habitat, IID should begin replacing all drain habitat as soon as efficiency based conservation measures are undertaken. As a condition of approval, the SWRCB will require IID to complete a vegetation survey of the IID service area and undertake a project to replace at least the amount of habitat found to exist during the survey, up to 652 acres.

In taking action on a water right application or change petition, the SWRCB must consider the applicable regional water quality control plan (Basin Plan). (See Wat. Code, § 1258.) In particular, the SWRCB must consider impacts on the instream beneficial uses that have been designated for protection in the Basin Plan, and the water quality objectives that have been adopted for protection of those uses, in determining whether the proposed change would have an unreasonable impact on instream beneficial uses.[9]

[9] The water quality standards applicable to waters of the state also include SWRCB Resolution 68-16 and, for waters of the United States, the federal antidegradation policy. (See 40 C.F.R. § 131.6; see also 40 C.F.R. § 131.12 [the federal antidegradation policy]; SWRCB Order WQ 86-17, pp. 17-19 [interpreting SWRCB Resolution 68-16 to incorporate the federal antidegradation policy under circumstances where the federal antidegradation policy applies].) As applied to instream beneficial uses of the drains, consideration of the measures necessary to implement the beneficial use designations and water quality objectives in the basin plan also serves to consider the measures necessary to apply antidegradation requirements. (Compare *PUD No. 1 v. Washington Department of Ecology* *[footnote continues on next page]*

For the first 15 years of the transfer, this order requires that Salton Sea salinity levels be maintained at levels that would have existed in the absence of the project. To the extent that land is fallowed to meet this requirement, there will be no increase in salinity or selenium levels in IID's drains, the New River, the Alamo River, or the Salton Sea. In addition, the creation of up to 652 acres of managed marsh habitat will provide for protection, on an overall basis, of species dependent on vegetation in the drains. Nevertheless, salinity and selenium concentrations may increase as a result of the transfer, at least to the extent that the transfer is based on water conservation measures that reduce tail water flows.

Other than by creating replacement habitat, the Final EIR (FEIR) concludes that increased selenium concentrations cannot feasibly be mitigated. While it may not be feasible to fully mitigate the impacts of this transfer as part of this order, there may be feasible measures to address the overall selenium problem, as part of a more global strategy. The issue of selenium impacts to the Salton Sea and its tributaries should be investigated. Because the impact to beneficial uses results from bioaccumulation of selenium, the ultimate resolution of the problem is to reduce the load of selenium to the Salton Sea and its tributaries.

We take official notice that in 1997, the Colorado Water Quality Commission amended its Classifications and Numeric Standards for the Gunnison and Lower Dolores River Basins to include new standards for selenium and the adoption of temporary modifications for selenium standards in four segments of the basin. (See Colorado Department of Public Health and Environment, Water Quality Control Commission, "Regulation No. 35, Classification and Numeric Standards for Gunnison and Lower Dolores River Basins," pp. 32-33.) These segments are now included in Colorado's 303(d) list of impaired waters for selenium and actions have commenced to determine the appropriate allocation of the basin's assimilative capacity for selenium to basin dischargers. (See Colorado Department of Public Health and Environment, Water Quality Control Commission, 2002 § 303(d) List and Monitoring and Evaluation List (Sept. 10, 2002).) This should result in a reduction of selenium levels in irrigation water imported into Imperial County. (R.T. p. 1268.) We also note that, to the extent that this transfer

(1994) 511 U.S. 700, 714-715 [to ensure consistency with applicable water quality standards a state may set requirements to protect designated beneficial uses] with 40 C.F.R. § 131.12(a)(1) [providing for protection of instream beneficial uses and the water quality necessary to protect those uses].)

results in reduced water deliveries to the Imperial County, it will also reduce selenium loading to the Salton Sea and its tributaries. (*Cf*. SWRCB Order WQ 2001-16, pp. 19-21 [approving mass emission limits as an appropriate measure to implement antidegradation policies as applied to an impaired water body].) In this order, we will condition our approval of the transfer on IID participating in a comprehensive planning process to address selenium impacts to the Salton Sea and its tributaries.

The impact of increasing selenium in the drains is of significant concern. In view of the important state interest in the proposed transfer, however, it would not be reasonable to deny approval of the transfer simply because it is not feasible, as part of this order, to prevent the proposed transfer from contributing to further violations of the water quality objective for selenium. While the SWRCB must consider water quality impacts as part of its water right proceedings, it is not required to fully implement applicable water quality standards as part of each individual water right decision or order. (See Wat. Code, §§ 174 [providing for "consideration" of water quality]; 1258 [the SWRCB shall "consider" applicable water quality control plans, and "may" condition appropriations to carry out such plans].) Water quality standards may be implemented as part of a more comprehensive effort. (See *id*., § 13242 [the program for implementation may include measures for implementation by any entity, not just the SWRCB].) We conclude that, with the mitigation provided, including IID's participation in a comprehensive planning process to address selenium impacts, and based on the public interest in the transfer, the impacts of the transfer on instream beneficial uses dependent on drain habitat are not unreasonable.

As with selenium, salt accumulation in the Imperial Valley and ultimately in the Salton Sea is a direct result of the rising salinity of Colorado River water, which affects all Colorado River stakeholders and is a major concern with respect to the United States' commitment to Mexico. Much of this salt originates either from federally owned lands, or from lands served by federally-developed irrigation projects. To address the problem of rising salinity of Colorado River water, the Colorado River Basin states established the Colorado River Salinity Control Forum in 1973. In addition to the efforts of the Colorado River Salinity Control Forum, the federal government is continuing with on-going efforts to control salinity and has authorized substantial funding for implementation of various programs and projects intended to address the salinity problem. (SWRCB 5, pp. 81-94.) Clearly, controlling salinity of Colorado River water

is an issue that needs to be addressed in a much broader context than the current proceeding, which can only address the incremental effects that can be attributed to the proposed water transfer. Salinity levels in IID's drains are primarily due to the salinity of the Colorado River water supply and the impacts of the transfer on fish and wildlife attributable to an incremental increase in the salinity of the drains will not be unreasonable.

### 5.2 Potential Impacts to the Salton Sea

The Salton Sea is home to roughly 400 species of birds, and on any given day, between 100,000 and 3,000,000 of these birds use the habitat in and around the Sea. As stated earlier, a number of the birds in and around the Sea are rare species that are protected under CESA or the federal ESA. Some, like the endangered brown pelican, use the main body of the Sea directly by foraging on the abundant fish. Others, like the Yuma clapper rail, use wetland areas that are sustained by IID drainage water and high ground water levels that exist immediately adjacent to the Sea.

The Salton Sea is an important part of a network of North American wetlands that support a vast number and diversity of waterfowl and shorebirds. With the loss of 95 percent of all of California's wetlands, the remaining 5 percent are of great importance to the migratory birds that use these habitats to feed, rest, nest, and raise their young. (PCL 17, p. 1.) The Salton Sea is an important stop along the Pacific flyway for migratory birds, as well as an important breeding area for some of these same species. (PCL 1, pp. 1-2, 5-6.) The Sea supports 25 to 30 percent of the U.S. population of American white pelicans and 90 percent of the population of eared grebes, as well as the some of the largest breeding colonies of double-crested cormorants and cattle egrets in North America. (R.T. p. 1865.) The Sea has grown increasingly important as the Colorado River Delta has become degraded with the decrease in river flows over time. (R.T. pp. 1553, 1873, 2420.)

The fish in the Sea are important not only to the species that forage on them directly, but also to sport fishermen who often find excellent fishing in the Sea. Tilapia, a fish native to the African continent, provides most of the forage base for the piscivorous (fish-eating) birds that frequent the Sea. It is believed that tilapia were introduced to the Sea sometime in 1964 or 1965 and by the early 1970's were the dominant fish in the Sea. They are successful because of their ability to thrive in the Sea's warm, often oxygen deficient, hyper saline water. (DOW 13, p. 3.) In the

1950's, the DFG made several trips to the Gulf of California to obtain a number of game fish species for release to the Salton Sea. Of the more than 30 species collected, only three became established in the Sea. The orange mouth corvina, the gulf croaker, and the sargo continue to persist in the Sea, with the corvina being the most sought after by sport fishermen. (DOW 9, p. 3.) The gulf croaker and the tilapia are the most abundant species in the Sea, while the population of sargo is very limited.

Only one native fish exists in the tributaries and main body of the Sea. The desert pupfish, a species listed as endangered under CESA and the federal ESA, persists in pools and tributaries to the Sea, sometimes using the main body of water to move from one drain to another. This species is uniquely adapted to the harsh desert environment of the Imperial Valley. It is able to survive daily air temperature fluctuations of 70° to 80° F, and a water temperature range of 36°F to 113°F. It also has a high salinity tolerance.

### 5.2.1 Existing Water Quality Conditions

The water quality of the Salton Sea is affected by several factors. Because the Sea is located in a closed basin, all natural and anthropogenic activities in the basin have the potential to affect the water quality of the Sea. These activities include agricultural operations and recreational, domestic and industrial uses. Although domestic and industrial users discharge water to the Sea or its tributaries, the vast majority of Sea inflow is provided by agricultural drainage water. As such, the quality and quantity of inflow is heavily dependant on agricultural operations in the Imperial and Coachella Valleys.

Along with salt and selenium, there are a variety of other minerals, chemicals and nutrients discharged into the Sea from agricultural operations. Some of these pollutants cause extremely eutrophic conditions. Nutrient loading from fertilizer use, as well as domestic wastewater from Mexico (R.T. p. 1534), contribute to the extremely high biological activity at the Sea. This biological activity is responsible for many of the benefits to wildlife of the Sea, as well as many of the conditions that harm wildlife. (R.T. pp. 1212, 1240-1241, 1643-1644.) While the eutrophic conditions of the Sea support a simple, but bountiful food chain, it also drives the Sea into anoxia when the rate of biological oxygen consumption exceeds the ability of photosynthesizing organisms to produce enough oxygen to keep up with demand. (PCL 24,

p. 4.) These anoxic conditions lead to massive aquatic organism die-offs, which have been linked to episodes of avian disease.

A sediment reconnaissance of the Sea performed by Mr. Richard Vogl showed a wide variety of heavy metals (nickel, cadmium, molybdenum, etc.) along with selenium and a variety of pesticides. (PCL 28.) These constituents are not all detrimental to Salton Sea water quality, and by extension, to the wildlife that uses the Sea, as many are trapped in the anoxic seabed. (PCL 28, p. 11.) While the concentration of selenium in the water column is below the 5 ppb aquatic life criterion for fresh water set by the USEPA, this may be due to its rapid uptake by microorganisms, causing selenium to enter the food chain. This would account for the high levels found in the fish in the Salton Sea, leading to a fish consumption advisory issued by the Office of Environmental Health Hazard Assessment. (R.T. p. 1266.)

The largest threat to Salton Sea sustainability, however, is rising salinity. (R.T. p. 1279.) The Salton Sea and previous lakes that occurred in the basin have been affected by rising salinity in the past, an inevitability for terminal bodies of water lying in closed basins. The periodic flooding of the Salton Trough by the Colorado River created a freshwater lake, which would recede over a period of 60 to 120 years, leaving behind the salts carried by the river. (PCL 2, p. 6.) This periodic flooding and drying is evidenced by turn of the century salt mining operations, as well as tales of native Californians mining salt by hand in the lake bed. (PCL 3, p. 10.)

As explained earlier, the Colorado River, which is the water source for most of the irrigated agriculture in the Imperial and Coachella Valleys, is the source of most of the salts that accumulate in the basin. The concentrations of salts in IID's water supply is expected to increase due to agricultural activities in the Colorado River watershed, and their associated return flows. (R.T. pp. 675-676, 921-922.) As irrigation water becomes more saline so will the irrigation tail water that flows into the drains and then into the tributaries to the Salton Sea. Currently, the concentration of salt in the Sea is about 45 parts per thousand (ppt), and without intervention or a change in average inflows, it will increase about 1 ppt every 4 years, indefinitely. (R.T. p. 1282.)

Historically, inflows from IID have contributed to flooding problems around the Sea, which persist today. (R.T. pp. 1212, 2759.) The elevation of the Sea is projected to decrease, however,

under baseline conditions. The Sea is projected to reach –230 feet by 2010, and to continue to decrease until it reaches –235 feet by approximately 2069. (IID 93, p. A3-24, fig. 3.3-7.) Lowering the current elevation of the Sea would seem to be desirable, but it comes at a steep cost unless some sort of measure to mitigate for the effects of increased salinity is in place. Due to the amount of dissolved salt in the top portion of the Sea (200,000,000 tons in the top 17 feet), if the Sea is lowered appreciably, salt concentrations in the remaining water column will increase substantially. (R.T. p. 1285.)

### 5.2.2 Effects of Salton Sea Water Quality on Fish and Wildlife

The non-native marine fish and invertebrates that inhabit the Sea are already stressed by elevated salinity. The Salton Sea Authority summarized the plight of the Sea in its Draft 2000 EIS/EIR:

> The Salton Sea ecosystem is under stress from increasing salinity, nutrient loading, oxygen depletion, and temperature fluctuations that may be threatening the reproductive ability of some biota, particularly sportfish species, and also causing additional ecosystem health problems. There are indications that the deteriorating environmental conditions may be contributing to the prominence of avian disease at the Sea. Without restoration, the ecosystem at the Sea will continue to deteriorate.

(IID 69, p. ES-1.) As the salinity of the Salton Sea increases, reproductive rates could fall, as environmental stress begins affecting the sex organs of fish, and eggs and juvenile fish become unable to survive in the more saline water. (DOW 13, p.16.) Should the salinity of the Sea continue to increase, the non-native fishery, including tilapia, will collapse. If the tilapia fishery collapses, the primary food source for piscivorous birds will be eliminated.

Fish populations of the Sea will decline gradually rather than in one catastrophic event. (DOW 2, p. 1.) Reduced prey for piscivorous birds will force these birds to look elsewhere for forage. If the fishery resource of the Salton Sea disappears, the birds will likely look to the Colorado River Delta for suitable habitat, as it is the closest, most similar body of water. The Delta, however, may not be able to provide the same habitat value as the Salton Sea because of differences in the type and quality of habitat available. In addition, 95 percent of the wetlands in the Colorado River Delta have been lost due to various activities in the U.S. and Mexico, leaving

only a fragment of the extensive habitat that existed there before water development projects began on the Colorado River. (Audubon 10, p. 4.)

### 5.2.3 Effects of Reductions in Elevation on Fish and Wildlife

In addition to affecting water quality, reductions in elevation of the Sea could adversely affect shoreline habitat. Shoreline habitat is vegetation that occurs on or near the shoreline of the Salton Sea. Tamarisk is the dominant plant in this community, and although it is an invasive non-native, it provides some benefits to avian species that use the Sea and surrounding areas. (IID 93, p. A3-57.) According to the transfer EIR, there are about 293 acres of tamarisk and iodine bush that make up shoreline strand habitat along the Salton Sea itself. These communities probably rely on seepage from the Sea, or a shallow groundwater table that is present immediately adjacent to the Sea. Another 2,349 acres of tamarisk-dominated wetlands occur immediately adjacent to the Sea. (IID 93, p. A3-29.) This wetland habitat is most likely to be found in private duck clubs, and state and federally managed marshlands.

Reductions in elevation of the Sea also will expose several small islands in the Sea, which serve as nesting and roosting habitat for colonial birds. Mullet Island is the most important of these, supporting the largest known breeding colony of double-crested cormorants in California. (IID 93, p. A3-33.) In addition, there is a pair of small islets in the south end of the Sea that also support cormorants. All three of these islands will be connected to the mainland if the Salton Sea elevation falls four feet from its current level, and the breeding colonies will be subject to predation. (IID 93, p. A3-18.) Under baseline conditions, the Sea is projected to decrease four feet by 2015. (IID 93, p. A3-20, table 3.3-7.)

### 5.2.4 Potential Impacts of the Project

As explained in greater detail in section 5.1.2, above, the conservation and transfer project has the potential to adversely affect fish and wildlife at the Salton Sea by impacting both the quantity and quality of water that flows in IID's drains, the New and Alamo Rivers, and eventually to the Salton Sea. As stated earlier, the nature and extent of the impacts will depend on the conservation measures employed.

In order to assess the impacts to the Salton Sea, an accurate picture of current and likely future conditions is necessary. Because the Sea is a dynamic ecosystem, the transfer EIR relies on

modeling studies to forecast future conditions both with and without the proposed transfer. (IID 93, pp. [3-19] – [3-21].)

In modeling baseline conditions, the EIR makes the following assumptions: the salinity of Colorado River source water will continue to increase, the federal government will take certain entitlement enforcement actions, the full effects of the 1988 IID/MWD Agreement will be realized, and inflow from CVWD, Mexico and IID will be reduced.[10] A number of models were used in succession to predict the effects of certain variables on the Salton Sea. The Salton Sea Accounting Model (developed by the USBR) is the final step in this series of models.

The Salton Sea Accounting Model demonstrates that the project will accelerate the rate of salinization of the Salton Sea. The piscivorous birds of the Salton Sea rely almost solely on tilapia for food; therefore, tilapia are used as the keystone species for evaluating project impacts to piscivorous birds. The EIR estimates that tilapia will no longer be able to reproduce at 60 ppt salinity. (IID 55, p. 3.2-147.) The EIR predicts that if 300,000 afa are conserved and transferred using conservation measures other than fallowing, the salinity of the Salton Sea will reach 60 ppt by 2012, eleven years earlier than under baseline conditions. (*Id*. at p. 3.2-151.) The projected rate of salinization under various transfer scenarios is shown in Figure 3.3-1 of the EIR, depicted below.

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[10] Parties to this proceeding raised a number of concerns regarding the baselines used to compare project impacts to anticipated future conditions. In response to these concerns, the Final EIR incorporates a sensitivity analysis which analyzes the effects that various assumptions have on projected water quality and quantity conditions of the Salton Sea. (IID 93, pp. 3-28, 3-29.) For example, parties took issue with the Draft EIR's characterizations of the future impacts of the 1998 IID/MWD Agreement, entitlement enforcement by the federal government, and reduced flows from various sources. The sensitivity analysis showed an error of roughly plus or minus 10 to 15 percent when all assumptions that had been questioned were modified. Based on the results of the sensitivity analysis, the SWRCB finds that the baseline relied upon in the Final EIR/EIS is a reasonably accurate depiction of future conditions of the Salton Sea.

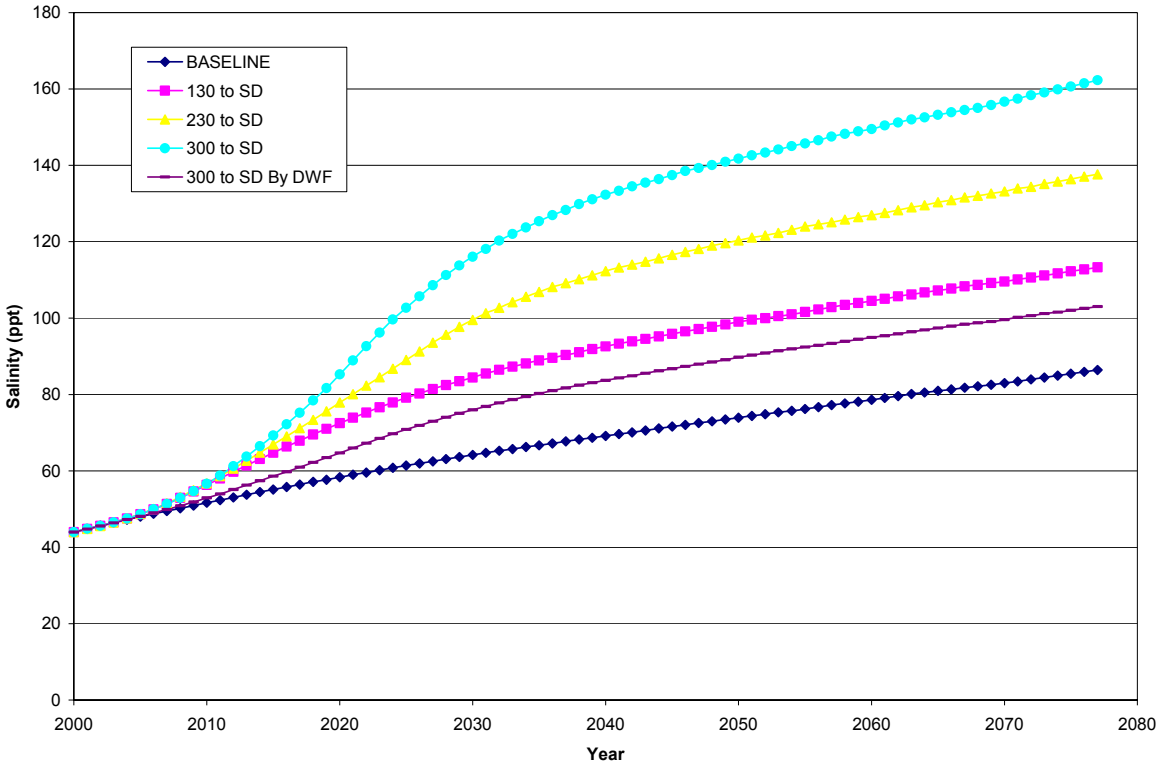


**FIGURE 3.3-1**
Projected Salinity Levels With and Without Implementation of the Water Conservation and Transfer Programs

(IID 93, p. A3-7.)

The Salton Sea Accounting Model also shows that, with a 300,000 acre-foot transfer, the Sea could drop as much as 15 feet as compared to baseline conditions, eventually reaching –250 feet. The elevation changes under different transfer scenarios are shown in Figure 3.3-4 of the EIR, reproduced below.

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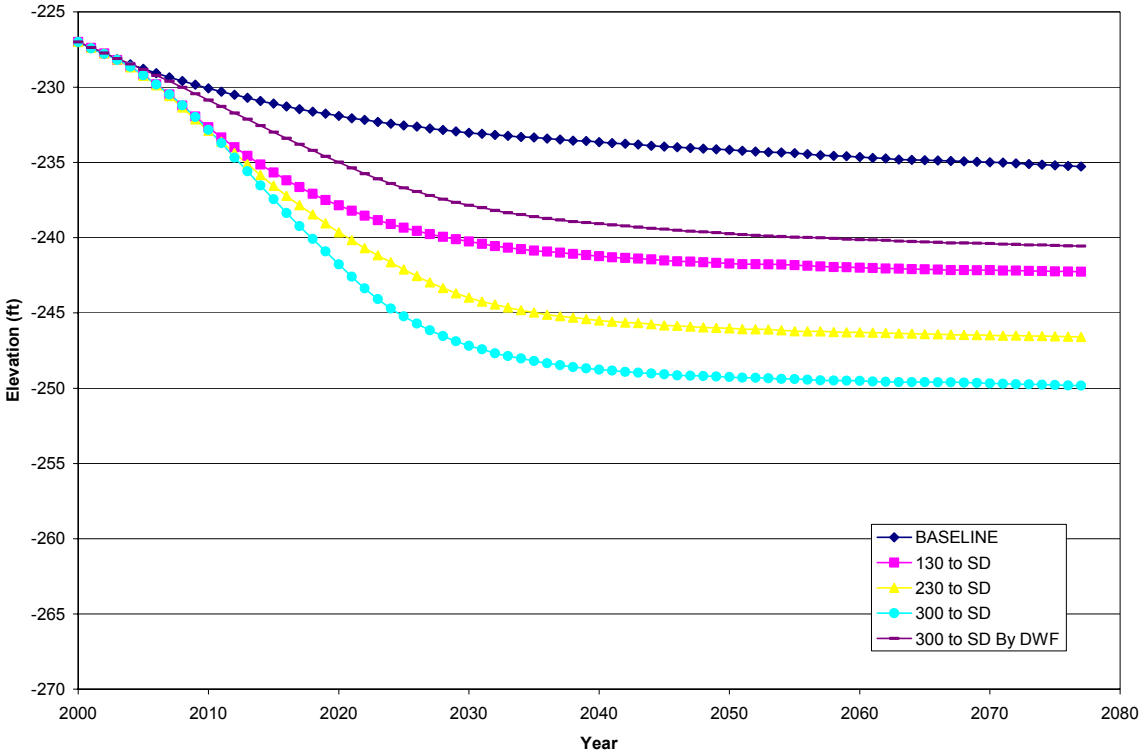


**FIGURE 3.3-4**
Projected Water Surface Elevation With and Without Implementation
of the Water Conservation and Transfer Programs

(IID 93, p. A3-17.)

### 5.2.5 Impacts to Feasibility of Restoration

By reducing inflows to the Salton Sea, the project could affect the feasibility of long term restoration of the Sea before California and the federal government have had an opportunity to complete a study of restoration alternatives. The Salton Sea Reclamation Act of 1998 (Pub.L. No. 105-372 (Nov. 12, 1998) 112 Stat. 3377) directs the Secretary of Interior, acting through the USBR, to prepare a study on the feasibility of restoring the Salton Sea. The study must evaluate the feasibility and cost-benefit of various options to: (1) continue to use the Salton Sea as a reservoir for irrigation drainage, (2) reduce and stabilize salinity, (3) stabilize the surface elevation, (4) reclaim, in the long-term, healthy fish and wildlife resources and their habitats, and (5) enhance the potential for recreational uses and economic development. (*Id.*, § 101(b)(1)(A).)

The Secretary of Interior is to carry out the study in accordance with a memorandum of understanding (MOU) with the Salton Sea Authority and the Governor of California. (*Id.*, § 101(b)(1)(C)(i).) In evaluating options, the Secretary must take into account the possibility that water may be transferred out of the Salton Sea Basin. (*Id.*, § 101(b)(3).)

Although the Salton Sea Reclamation Act required the study to be submitted to certain congressional committees by January 1, 2000, the Secretary has not done so yet. (Salton Sea Authority 1, p. 5.)

Recently, the California Legislature also addressed restoration of the Salton Sea. SB 482 finds that restoration of the Salton Sea is in the state and national interest. (Stats. 2002, ch. 617, § 1.) SB 482 adds a new section 2081.7, subdivision (e) to the Fish and Game Code, which requires the Secretary of the Resources Agency to enter into an MOU with the Secretary of Interior, Salton Sea Authority, and the Governor of California, for the purpose of evaluating and implementing restoration projects that meet the objectives of the Salton Sea Reclamation Act. The MOU is to establish a process for preparing and releasing a report on restoration alternatives, selecting a preferred alternative, and submitting a final report to Congress and the California Legislature by January 1, 2007. (*Id*., § 2.)

The conservation and transfer project could foreclose the possibility of restoring the Salton Sea before the state and federal governments have determined whether long-term restoration of the Sea is feasible. A witness for the Salton Sea Authority testified that restoration of the Sea would be possible with existing inflows. (R.T. pp. 1453-1456.) The witness testified that salinity could be controlled by diverting 80,000 to 90,000 afa from the Sea into in-sea salt evaporation ponds, which would result in only a couple of feet of decline in elevation of the Sea. (R.T. p. 1455.) If, however, on-farm and delivery system improvements are used to generate water for transfer, witnesses for the Salton Sea Authority and the Planning and Conservation League testified that restoration of the Sea would be infeasible. (R.T. pp. 1285, 1291, 1304, 1396-1397, 1673.) With reduced inflows, salinity control and other restoration alternatives would more than triple in cost, and could exceed one and a half billion dollars. (SSA 1, pp. 3-4; R.T. p. 1506.)

### 5.2.6 The Salton Sea Habitat Conservation Strategy (SSCHS)

The HCP prepared by IID in support of IID's applications for incidental take permits includes the SSHCS, which is designed to mitigate the impacts of the project on the biological resources of the Salton Sea. The SSHCS calls for providing replacement water to the Sea to mitigate for reduced inflows caused by the transfer project. The salinity value relied on in the SSHCS for mitigation purposes is 60 ppt, which, as stated earlier, represents the level at which tilapia are postulated to cease reproduction. (IID 55, p. 3.2-147; IID 93, p. A3-25.) However, some

uncertainty exists regarding the ability of tilapia to exist and propagate in hyper-saline waters. (DOW 6, p. 7; R.T. pp. 1615-1616.) Because of the uncertainty involved in determining specific values that will result in the demise of a species (DOW 2, p. 1) and the uncertainty involved in modeling water quality and quantity parameters, the SSHCS takes a conservative approach to providing mitigation water to the Sea. Figure 3.3-6 of the EIR (below) depicts the results of multiple model runs of the Salton Sea accounting model as it relates to future salinity conditions in the Sea.

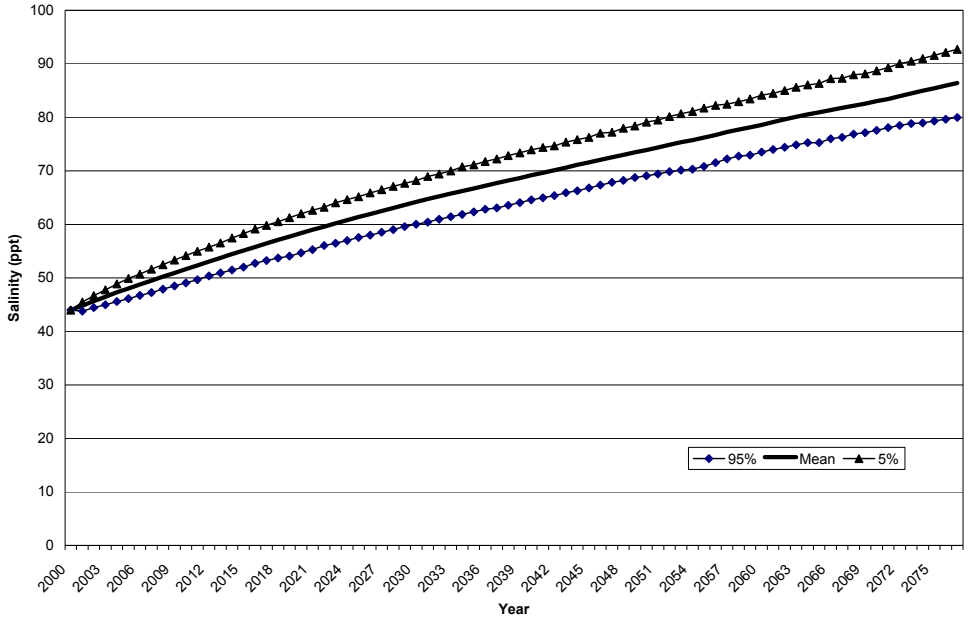


**FIGURE 3.3-6**
Salinity Projections in the Salton Sea Under the Baseline

(IID 93, p. A3-23.)

The mean salinity curve depicted in the figure is a modeled estimate of what the Sea will experience in the coming years under no-project, baseline conditions. Although the mean salinity curve indicates that the Sea will reach 60 ppt by 2023, the SSHCS proposes to maintain salinity levels at or below the 95 percent confidence bound line until 2030. In effect, the SSHCS could extend the life of the Sea by approximately 7 years. (IID 93, p. A3-25.) Reduced inflows would be replaced on a one-for-one basis, plus or minus any amount of water necessary to maintain the salinity trajectory of the 95 percent confidence bound under the baseline. (IID 93, p. A3-23.) IID would not be required to provide replacement water if doing so would increase the elevation of the Sea above the level projected for the proposed project, as shown in Figure 3.3-7 of the EIR, below. (*Ibid.*) In addition, the SSHCS would allow IID to discontinue

providing replacement water prior to 2030 if a Salton Sea restoration project is implemented, or if it can be demonstrated that tilapia can no longer reproduce successfully. (*Ibid*.)

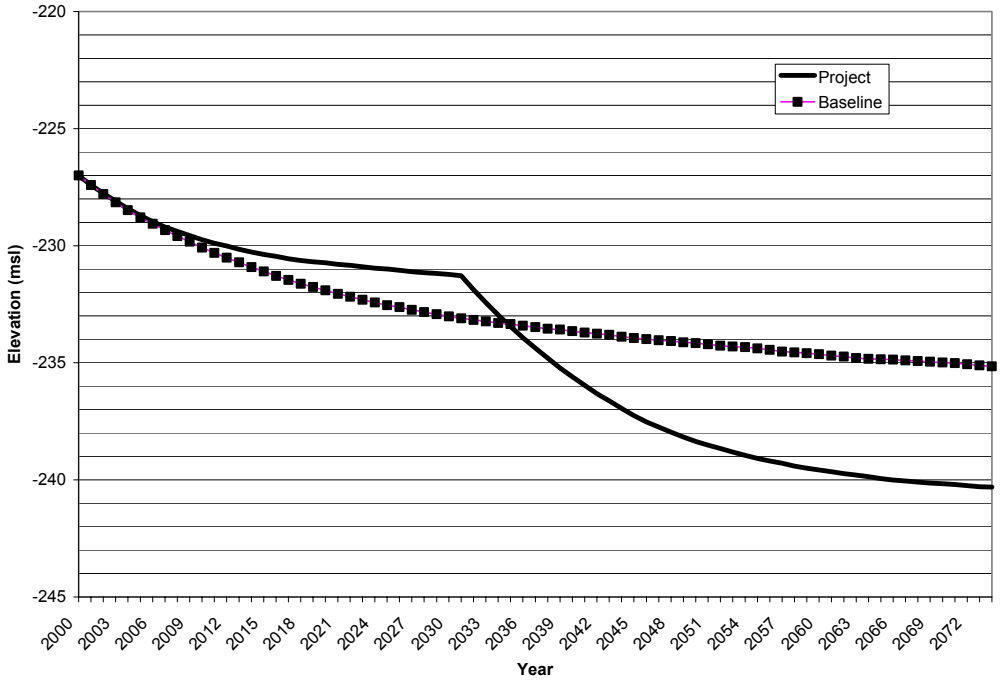


**FIGURE 3.3-7**
Projected Mean Water Surface Elevation of the Salton Sea Under the Proposed Project and the Baseline

(IID 93, p. A3-24.)

The SSHCS proposes to mitigate for the potential loss of shoreline habitat by surveying and replacing lost habitat beginning in the year 2030, or after IID's obligation to provide replacement water ends, whichever occurs first. The replacement habitat would consist of mesquite bosque or cottonwood-willow habitat, both of which are native riparian communities that have much higher habitat value to avian species than non-native tamarisk habitat. (IID 93, pp. A3-27 – A3-31.)

### 5.2.7 IID Should Be Required to Implement the SSHCS for Fifteen Years

The Salton Sea is a highly valuable resource for fish and wildlife and for recreation. Both Congress and the California Legislature have recognized the importance of addressing long-term restoration of the Sea. At the present time, however, no one knows whether restoration of the Sea will prove to be feasible. Moreover, providing replacement water to the Sea could be costly

to petitioners and the residents of Imperial County. If the proposed transfer is not implemented because the cost of mitigation is too high, the consequences to the State's water supply and to the San Francisco Bay/Sacramento San Joaquin River Delta (Bay-Delta) could be severe. In view of these competing considerations, we conclude that IID should be required to maintain baseline salinity levels, as specified by the SSHCS, for 15 years. Fifteen years will allow the Secretary of Interior, Salton Sea Authority, Secretary of Resources, and the Governor of California sufficient time to study the feasibility of restoration of the Salton Sea and begin implementation of any identified feasible restoration measures.

Under Water Code section 1736, the SWRCB may approve the proposed transfer if the impacts to fish, wildlife, and other instream beneficial uses are not unreasonable. In considering whether the impacts would be unreasonable, the SWRCB must take into account not just the extent of the impacts, but all relevant factors, including the benefits of the proposed transfer and the cost of mitigation.

Also relevant in this case is the fact that, while maintaining baseline salinity levels will keep the habitat values of the Sea intact for some period of time, it will not solve the basic problem of increasing salinity in the long term. Without some sort of reclamation project to reduce salinity, the Salton Sea will become too saline to support the variety of fish and wildlife species that presently use the Salton Sea. Although witnesses for the Salton Sea Authority testified that restoration of the Sea with current inflows would be feasible, the evidence on the feasibility of restoration under different inflow scenarios was inconclusive. It would be unreasonable to require the continued mitigation of the impact of the transfer on the Salton Sea if the decline of the Sea continues to the point where restoration is no longer feasible, or if it becomes clear that no implementation plan will ever be developed. At the point when it becomes unreasonable to require continued mitigation of impacts on the Salton Sea, because there is no longer any hope for saving the Sea, the public interest in avoiding inappropriate burdens on this important transfer outweighs any harm to instream beneficial uses of the Sea.

Mitigating the impacts to the Salton Sea could have socio-economic impacts in Imperial County. Implementation of the SSHCS will require a large volume of replacement water. Although the SSHCS does not specify the source of the replacement water, the only possible source identified during this proceeding was water conserved by fallowing land within IID. (R.T. pp. 3106-3108.)

In addition, it probably will not be practicable to provide replacement water by fallowing unless some amount of land is fallowed in order to generate water for transfer. (R.T. p. 3167.) Fallowing extensive acreage within IID could have significant socio-economic impacts in Imperial County, as discussed in section 6.4, below.

In addition, the possibility exists that if the cost of mitigation is too high, IID may not be willing to implement the transfer on a voluntary basis. If the transfer stalls, the QSA may not be executed by December 31, 2002, which would lead to suspension of the Interim Surplus Guidelines. A witness for MWD testified that if the Interim Surplus Guidelines are suspended and California is limited to its 4,400,000 afa apportionment, then under the terms of the Seven-Party Agreement, Southern California as a whole would face an immediate short-fall of approximately 800,000 afa, and MWD would face an immediate short-fall of 600,000 afa. (SDCWA 4, p. 5; R.T. pp. 149-150.) This could have significant economic consequences in Southern California and lead to increased pressure on the limited amount of water available from the Bay-Delta. (SDCWA 4, p. 5; SDCWA 5, pp. 5-6; R.T. pp. 116-117.) Increased demand for a significant amount of water for Southern California could also upset ongoing efforts to improve water management and restore the ecological health of the Bay-Delta through the CALFED planning process. (SDCWA 5, pp. 2-3, 6; R.T. p. 116.)

In considering the appropriate balance of the competing considerations outlined above, we are guided by the provisions of SB 482. As previously stated, SB 482 will authorize DFG to issue an incidental take permit in connection with implementation of the QSA, including the transfers authorized under the QSA, under specified conditions. (Stats. 2002, ch. 617, § 2.) In effect, SB 482 balances the same considerations at issue here. As discussed previously, SB 482 recognizes the value of restoring the Salton Sea.

The law as recently enacted also recognizes that mitigating the impacts of the transfers on the Sea may entail fallowing, which could have socio-economic impacts. SB 482 requires the Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with IID and Imperial County, to prepare a report on the economic impacts of fallowing. (Stats. 2002, ch. 617, § 9.) If necessary, the report is to include recommendations concerning the amount of funds needed to mitigate economic impacts and a program to administer those funds. (*Ibid*.)

Finally, SB 482 expressly finds that it is important for the state to reduce its use of Colorado River water, but that actions taken to reduce California's Colorado River water use should be consistent with the state's commitment to restore the Salton Sea. (Stats. 2002, ch. 617, § 1.) SB 482 resolves that DFG may authorize the incidental take of fully protected, threatened and endangered species in connection with implementation of the QSA, provided that certain conditions are met. Among other things, the QSA must be executed by December 31, 2002, and DFG must find, in consultation with the Department of Water Resources, that implementation of the QSA, during the first 15 years that the agreement is in effect (1) will not result in a material increase in projected salinity levels at the Salton Sea and (2) will not foreclose alternatives for reclamation of the Salton Sea. (*Id*., § 2.) SB 482 also requires compliance with the existing provisions governing the issuance of incidental take permits. (*Ibid*.)

SB 482 achieves a reasonable balance between the importance of mitigating project impacts to the Sea long enough to study the feasibility of long-term restoration, the economic impacts of fallowing, and the importance of the transfer to California's water supply needs.[11] Accordingly, by this order we require IID to maintain baseline salinity levels, as outlined under the SSHCS, for 15 years following the effective date of the QSA, with the following two exceptions. The SSHCS would allow IID to discontinue providing replacement water in the event that the tilapia can no longer successfully reproduce. It is unclear what "successful reproduction" means. No specific methods are suggested in the FEIR to define the meaning and scope of "successful reproduction." The intent of this order is to preserve the feasibility of restoration for a period of 15 years. If, for example, the tilapia fishery were to "collapse" in the year 2004 and IID were to reduce its inflows consistent with the SSHCS, the rate of salinization could sharply increase. A sharp increase in salinity in the near term could render a salinity control project infeasible. Therefore, we find that IID should be required to continue to implement the SSHCS for 15 years, regardless of the health of the tilapia fishery. In addition, instead of following the 95 percent confidence interval for salinity, IID should follow the mean projected salinity trajectory (as depicted in Figure 3.3-6).

[11] We recognize that if the QSA, as defined in SB 482, is not executed by December 31, 2002, then subsequent legislation authorizing the incidental take of fully protected species will be required for the transfer to proceed. Any subsequent legislation may impose different requirements than those imposed by SB 482. Accordingly, we will reserve continuing authority to consider whether any changes to this order would be appropriate in light of any subsequent legislation that addresses the measures necessary to allow the incidental take of fully protected, threatened, or endangered species that rely on the Salton Sea.

To the extent that shoreline habitat is affected after the 15-year mitigation period, we will require IID to provide replacement habitat as specified in IID's HCP. (IID 93, p. A3-27.) The island rookeries will become connected to the mainland in the year 2011 under baseline conditions. The 15-year mitigation period protects these nesting sites beyond their forecasted useful life and no additional mitigation is warranted.

In conclusion, we find that, with the implementation of the SSHCS for 15 years, the impacts of the conservation and transfer project on the fish, wildlife, and other instream beneficial uses of the Salton Sea will not be unreasonable. Fifteen years will allow the Secretary of Interior, Salton Sea Authority, Secretary of Resources, and the Governor of California sufficient time to study the feasibility of restoration of the Salton Sea and begin implementation of any identified feasible restoration measures. The feasibility study could call for an allocation of responsibility for protecting the Salton Sea that includes a continuation of the responsibility of the petitioners to mitigate the effects of the transfer.

It is also possible that a plan will be developed that provides for restoration, based on federal funding or contributions from other sources, sufficient to avoid the need for the petitioners to continue to mitigate the impacts of the transfer on the Salton Sea. This order keeps the options open by preventing the transfer from accelerating the decline of the Salton Sea long enough to allow for the feasibility of restoration to be studied and a restoration plan to be developed. We will reserve continuing authority to consider whether it would be appropriate to add, delete, or modify the mitigation measures required by this order to protect the Salton Sea in light of the results of the study on the feasibility of restoration to be prepared by the Secretary of Interior in cooperation with the Resources Agency, the Salton Sea Authority, and the Governor of California.[12]

[12] The Regional Board, the Planning and Conservation League, and Defenders of Wildlife call for protection of the water quality of the Salton Sea, consistent with the requirements of the federal antidegradation policy. (40 C.F.R. § 132.12.) With the mitigation requirements imposed by this order, the transfer will not have an adverse impact on the water quality of the Salton Sea, and the degradation will not occur for at least 15 years. It is uncertain what the future of the Sea will be after 15 years. Restoration efforts may continue to maintain the water quality of the Salton Sea, or it may be determined that maintaining the existing beneficial uses is impossible. As explained in section 5.1.5, it is appropriate to apply water quality standards as part of a more comprehensive review, and not just to this transfer in isolation. Because we are reserving continuing authority, we need not speculate at this time on how or under what circumstances the SWRCB should address degradation that may occur 15 years from now.

### 5.2.8 Implementation of the SSHCS Is Legally Feasible

SDCWA called into question the legal feasibility of the SSHCS, arguing that IID may not use water conserved by fallowing as a source of replacement water because the Law of the River does not allow the use of Colorado River water for purposes of preserving fish and wildlife habitat. For the reasons set forth below, we conclude that, consistent with the Law of the River, petitioners may use water conserved by fallowing as replacement water, and therefore implementation of the SSHCS is legally feasible.

As explained in section 3, above, the U.S. Supreme Court held in *Arizona v. California* that the Boulder Canyon Project Act (Project Act) established a comprehensive scheme for the distribution of Colorado River water which preempts inconsistent state law. (*Arizona v. California*, *supra*, 373 U.S. 546, 587-588.)

SDCWA argues that IID may not require delivery of Colorado River water for fish and wildlife purposes under section 5 of the Project Act, which authorizes the Secretary of Interior to contract for the storage and delivery of water for "irrigation and domestic uses, and generation of electrical energy . . . ," but does not expressly provide for the delivery of water for fish and wildlife purposes. (43 U.S.C.A. § 617d.) Section 5 specifies further that no person shall be entitled to the use of water stored by the Secretary of Interior except by contract. (*Ibid*.) SDCWA also cites to article III, paragraph (e) of the 1922 Compact. Article III, paragraph (e) prohibits Upper Division States from withholding and Lower Division States from requiring the delivery of water "which cannot reasonably be applied to domestic and agricultural uses."

Under California law, the use of water for the preservation and enhancement of fish and wildlife resources is recognized as a beneficial use. (Wat. Code, § 1243.) Water Code section 1707 authorizes any water right holder to petition the SWRCB for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation.

We question whether the Law of the River can or should be interpreted to preclude the use of water for fish and wildlife purposes where that use is made in order to mitigate the adverse environmental impacts of conserving and transferring water for irrigation and domestic uses. We need not resolve the issue here, however, because the provisions of the Law of the River that

SDCWA claims limit the purposes for which Colorado River water may be used plainly do not limit IID's ability to use Colorado River water for fish and wildlife purposes under its present perfected rights consistent with California law. Article VIII of the 1922 Compact states that present perfected rights to the use of Colorado River water are unimpaired by the Compact. Similarly, as the Supreme Court recognized in *Arizona v. California*, a significant limitation to the Project Act is the requirement that the Secretary of Interior satisfy present perfected rights. (*Arizona v. California*, *supra*, 373 U.S. 546, 584.) Section 6 of the Project Act provides that water stored under the Project Act is to be used first for river regulation, navigation, and flood control; second for irrigation and domestic uses and satisfaction of present perfected rights pursuant to article VIII of the Compact; and third for power generation. (43 U.S.C.A. § 617e.)

The Supreme Court has defined present perfected rights as rights that had been perfected in accordance with state law as of June 25, 1929, the effective date of the Project Act. (*Arizona v. California*, *supra*, 376 U.S. 340, 341.) IID holds a present perfected right to 2,600,000 afa, or the quantity of water necessary to irrigate 424,145 acres and satisfy related uses, whichever is less, with a priority date of 1901. (*Arizona v. California* (1979) 439 U.S. 419, 429 [99 S.Ct. 995, 1000].)

In *Bryant v. Yellen* (1980) 447 U.S. 352 [100 S.Ct. 2232], the U.S. Supreme Court affirmed that that the Project Act does not limit the ability of the holder of a present perfected right to exercise the right consistent with state law. Coincidentally, *Bryant v. Yellen* involved the question whether the use of water by IID under its present perfected rights was subject to the requirement of federal reclamation law, which was incorporated by the Project Act, that water be used on parcels no larger than 160 acres. The Supreme Court reiterated that a significant limitation to the Project Act was the requirement that the Secretary of Interior satisfy present perfected rights. (*Id*. at pp. 364, 370.) The Court explained that present perfected rights originated under state law and that, with respect to present perfected rights, the Project Act did not displace state law, which must be consulted in determining the content and characteristics of a presented perfected right. (*Id*. at pp. 370-371.) The Court held that IID had the right under state law to deliver water under its present perfected rights without regard to the acreage limitation. (*Id*. at pp. 371-374.)

Likewise, IID is entitled under California law to change the authorized purposes of use of its present perfected rights to include the preservation of fish and wildlife habitat, even if the

Compact or the Project Act would otherwise limit the use of Colorado River water to irrigation, domestic use, and generation of hydroelectric power.

A related issue is whether IID would be required to obtain approval from the SWRCB before using water for fish and wildlife purposes. The use of water for fish and wildlife purposes as contemplated under the SSHCS also may entail a change in place of use, for which SWRCB approval may be required. Whether SWRCB approval of these changes would be required depends on whether IID proposes to exercise its rights under Permit 7643 or under its pre-1914 appropriative rights. If IID proposes to add fish and wildlife as an authorized purpose of use or expand the authorized place of use under Permit 7643, IID must file a change petition with the SWRCB. If, on the other hand, IID proposes to exercise its pre-1914 appropriative rights, IID may change the authorized purpose of use, place of use, or point of diversion without obtaining SWRCB approval, provided that others are not injured by the change. (Wat. Code, § 1706.)[13]

### 5.3 Impacts to Fish and Wildlife in and around the Lower Colorado River

The lower Colorado River is home to a diversity of common and rare plant, bird, fish and mammal species. The Colorado River of today is vastly different from the river that existed before human intervention. Throughout its history, the river would flood and recede based on local and regional meteorological patterns, often cutting new channels or reclaiming old ones. The river moved millions of tons of sediments, sometimes destroying miles of established riparian vegetation, while creating opportunities for new vegetation to establish itself in other areas. The highly variable periodicity and intensity of flows in the river dictated that the kind of vegetation that established itself in the lower Colorado River be able to adapt to changing conditions. (IID 55, p. 3.2-14.)

Today, the lower Colorado River has been controlled to a great extent. Seven dams have been constructed in the 143 miles that make up the lower Colorado River region alone. The normalization of flow in the lower Colorado River has had the effect of channelizing the main

[13] In cases where dedicating water to an instream use involves simply bypassing the water, it would be advisable for a pre-1914 appropriative right holder to file a change petition under section 1707, even if doing so is not required. Going through the SWRCB's formal process would serve to place downstream water users on notice that the water has been dedicated to an instream use and is unavailable for diversion and would protect the right holder from claims of abandonment or forfeiture for nonuse. Under the facts of this case, however, these considerations do not appear to be an issue. If IID chooses to provide replacement water to the Salton Sea under its present perfected rights, it will continue to exercise a measure of control over the diversion and delivery of the water.

stem of the river, while filling many backwater and oxbow areas with sediment. The sediment that is removed from the main channel is not replenished from upland area erosion as it once was; it is now trapped in the impoundments created by dams. Gone too are the periodic flood flows that would sustain phreatophytic vegetation communities in the river's floodplain. Sediment filled, warm water has been replaced by clear, cold water released from the bottom of reservoirs. (IID 55, p. 3.2-14.)

The drastic changes in the lower Colorado River's behavior have diminished the plant and wildlife communities that relied on an untamed river. The current river management system rarely allows more than localized flooding. Stabilized banks do not allow the river to meander within its floodplain, effectively limiting riparian vegetation to a very narrow corridor along the river. Riparian plant communities have also suffered due to the invasion of non-native phreatophytes such as salt cedar (Tamarix genus), and the limited ability of native trees to spread their seeds by utilizing flood flows. As soil salinities continue to increase in areas that were once flushed periodically, salt cedar has an even greater advantage over native vegetation because of its greater tolerance for saline soils. (IID 55, p. 3.2-15.)

The transfer will reduce flows between Imperial Dam to Parker Dam, which has the potential to affect the habitat values associated with the lower Colorado River between these two points (143 river miles). Because riparian habitat relies on shallow groundwater levels to survive and reproduce, any lowering of these levels has the potential to affect these habitat types. The maximum anticipated change in average elevation of the lower Colorado River as a result of the proposed project is 4.48 inches, which would expose a maximum of 10 inches of shoreline. (IID 55, p. 3.2-104.) Almost 7,000 acres of cottonwood willow habitat exists in the section of river that could be affected by the proposed project, of which approximately 1,500 acres have been shown to be occupied by Southwestern willow flycatchers, a species listed as endangered under CESA and the federal ESA. Of this acreage, up to 279 acres could be lost as a result of the transfer. (*Id.* at p. 3.2-107.)

Backwater areas also stand to be impacted by reduced water levels in the lower Colorado River. These areas serve as important breeding and nursery habitat that is used by razorback sucker and bonytail chub, both endangered native Colorado River fish species. Reduced water levels in these areas can impede fish movement between the backwaters and the main stem of the river.

Backwaters also provide habitat for the Sonoran mud turtles, which feed on submerged vegetation and invertebrates. Some avian species also rely on backwater pools for foraging and watering. The proposed project could alter or significantly affect up to 33 acres of backwater habitat in the lower Colorado River. (IID 55, p. 3.2-109.) In addition to the value of riparian habitat for fish and wildlife, riparian habitat on the lower Colorado River has historical and current cultural significance to CRIT. (CRIT 16, 17.)

CRIT argued that the analysis of impacts to the lower Colorado River contained in the transfer EIR is not accurate because the analysis relies on an average decrease in river levels and does not estimate the duration and frequency of the projected decrease in river levels. However, in view of the fact that under existing conditions river levels fluctuate widely, and can fluctuate by as much as five feet on a daily basis (IID 55, p. 3.2-105), we find that a more detailed analysis is not necessary in order to develop a reasonable estimate of the impacts of the transfer on the biological resources of the lower Colorado River.

As part of the Final EIS for the Interim Surplus Guidelines (IID 57), the USBR analyzed the potential impacts to the lower Colorado River of changing the point of diversion of up to 400,000 acre-feet of water. Subsequently, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) that identified habitat conservation measures necessary to mitigate for the actions contemplated in the Interim Surplus Guidelines. (IID 58.) The transfer EIR/EIS relies on the mitigation measures outlined in the BO to be implemented by the USBR to mitigate the impacts of the transfer on the lower Colorado River to a less than significant level. These measures include:

1. Monitoring and replacement of up to 744 acres of cottonwood-willow habitat,
2. Replacement of up to 44 acres of backwater habitat,
3. Stocking of up to 20,000 juvenile razorback suckers and an indefinite number of bonytail chubs below Parker Dam.

CRIT expressed concern about the lack of specificity regarding implementation of these mitigation measures, including where the replacement habitat will be located, what the criteria for selecting replacement habitat will be, and what the proposed monitoring plan will entail. Because the USBR has assumed responsibility for mitigating these impacts, details concerning

implementation of the proposed mitigation plan should be addressed by the USBR. We anticipate that the USBR will implement the mitigation measures in coordination with ongoing efforts to conserve habitat and work toward the recovery of certain species on the lower Colorado River pursuant to the Colorado River Multi-Species Conservation Program. (See IID 93b, p. 1-21.)

The SWRCB finds that, with the mitigation measures defined by the USFWS BO to mitigate for the impacts created by the change in point of diversion of 400,000 acre-feet, as contemplated by the Interim Surplus Guidelines, the impacts of the transfer to fish, wildlife, and other instream beneficial uses of the lower Colorado River will be reasonable.[14] We will reserve continuing authority to consider whether any feasible mitigation measures should be implemented by IID in the event that the measures identified in the BO are not implemented by the USBR as expected. Even if any impacts to the lower Colorado River remain unmitigated, we find that the impacts will not be unreasonable in light of the benefits of the project, as described in section 5.2.7, above.

### 5.4 Potential Impacts to Fish and Wildlife in the San Diego Region

A number of parties submitted evidence regarding potential growth inducing impacts in the SDCWA service area. The parties alleged that the water received from IID will be more reliable than the water SDCWA currently receives under contract from MWD, and will therefore allow local planning agencies in the San Diego region to approve new construction, which will unreasonably affect fish, wildlife, and other instream beneficial uses in the region.[15]

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[14] It merits note that these mitigation measures were designed to mitigate the impacts of a 400,000 acre-foot transfer, and therefore should be more than adequate to mitigate the impacts of the proposed 300,000 acre-foot transfer.

[15] SDCWA questions whether the requirement of Water Code section 1736 that there be no unreasonable impact on instream beneficial uses applies to instream beneficial uses in the proposed place of use to which water will be transferred. By its terms, section 1736 does not limit its application to impacts within the watershed of the existing point of diversion or place of use, and recognizing the intent of the Legislature that the SWRCB consider the water quality impacts of its water right decisions and orders, we do not construe section 1736 to incorporate such a limitation. (See generally Wat. Code, § 174.) While the SWRCB should consider potential water quality impacts, section 1736 does not necessarily require that any water quality impacts in the proposed place of use be avoided as a condition of approval of the transfer. Especially where any water quality impacts would result from the discharge of waste from land uses supported by the transfer, and the potential for and extent of any impacts is remote or speculative, it may be appropriate to rely on other regulatory programs to determine that any impacts will not be unreasonable.

To the extent that historic patterns indicate future trends, reduced water availability is unlikely to affect growth in urban areas. Water is one of many factors that may influence growth in a region but does not, by itself, cause the growth of a region. Economic, legal, and societal factors all play a role in growth, and water shortages have rarely done more than slow the progress of adequately financed development proposals.

In the San Diego region, the San Diego Association of Governments (SANDAG) is tasked with identifying future water supply needs through its Regional Growth Forecasts, and SDCWA is charged with locating and acquiring the water. (IID 93, p. 3-101.) The roles of these agencies confirm that growth is not fueled by the availability of excess water. Rather, growth spurs the search for additional supply. A representative from SANDAG testified that water supply does not enter into the growth forecasts produced by SANDAG for the region. (SDCWA 39, pp. 5-6.) Instead, growth forecasts are based on birth, death, immigration, and emigration rates. (*Ibid*.)

Because urban water areas, such as the metropolitan San Diego area, have a large economic base as compared to other water users, urban water supply agencies can generally identify many feasible potential sources of supply. Testimony from a number of witnesses showed that San Diego will seek out water from other sources if this transfer is not approved or implemented, chief among those sources is the Sacramento/San Joaquin Delta, an ecologically valuable and sensitive area. (R.T. pp. 116, 143, 165, 366, 372, 395.)

Although a reliable water supply does not cause growth, the cost of the water supply can affect where development in a region is likely to occur and the types of industry that can be supported. Under the proposed transfer, the quantity of water delivered within MWD's service area will not change. MWD's Colorado River Aqueduct is operated at or near full capacity. (IID 93, pp. 3-94, 3-95; IID 93a, pp. 6-3, 6-7; SDCWA 40, p. 9.) Instead, the proposed project will result in a redistribution of water among the agencies that receive Colorado River water delivered through MWD's Colorado River Aqueduct. (IID 93a, p. 6-3.) Accordingly, growth in the metropolitan region of coastal Southern California will not change as a result of this project.

However, it is possible that SDCWA could receive a slightly greater share of the water diverted through the aqueduct than it currently receives. To the extent that the proposed transfer results in impacts to fish and wildlife in the San Diego area, those impacts are most likely to stem from changes in water quality in water bodies in and around San Diego or from changes in land use. But the SWRCB cannot speculate which water bodies or what lands might be affected and to what extent.

The California Legislature has determined that land use decisions should be made at the local level. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782 [38 Cal.Rptr.2d 699, 711, 889 P.2d 1019, 1031] ["The Legislature, in its zoning and planning legislation, has recognized the primacy of local control over land use."]; see also Gov. Code, § 65800 [declaring intent of Legislature "to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters"].) Land use decisions are affected by many factors that are beyond the scope of this proceeding. We do not believe that it serves the public interest for the SWRCB to control the local decision-making process through water supply actions.

To the extent that impacts occur in the San Diego region as a result of this action, they are best controlled through existing programs. The SANDAG adopted a Regional Growth Management Strategy in 1993. San Diego County and the County's 18 cities have incorporated the provisions of this strategy into their individual general plans. (IID 93a, p. 6-1.) Any changes in land use must be approved in conformance with these general plans and CEQA. Water quality impacts are best controlled through the implementation of Best Management Practices (BMPs) and other measures specified in municipal storm water permits issued by the San Diego Regional Water Quality Control Board and in the Model Urban Management Stormwater Mitigation Plan for San Diego County, the Port of San Diego and Cities in San Diego County that has been developed by local jurisdictions.

Because the proposed transfer probably will not have any growth inducing impacts, and because regulatory programs are in place and are being refined to address the water quality impacts of land use and development, including any new land uses or development that might be supported by the transfer, we conclude that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses in the San Diego region.

A number of parties argued that SDCWA should explore desalination as an alternative to the proposed transfer. Although we disagree that desalination is currently a viable alternative to the transfer, desalination could become an important future source of water for Southern California. In fact, in its 2000 Urban Water Management Plan Report, SDCWA identified desalination as one of several water supply sources that could meet SDCWA's future needs. (SDCWA 7, pp. 4-23 – 4-26.) In accordance with the Urban Water Management Planning Act, SDCWA must prepare an urban water management plan every five years that identifies existing and planned sources of water. (Wat. Code, §§ 10620, 10621, 10631.) This order directs SDCWA to report to the SWRCB biannually beginning within one year of the effective date of this approval, on the status of progress towards implementation of any desalination projects.

## 6.0 CEQA COMPLIANCE AND OTHER PUBLIC INTEREST ISSUES

In this section, we address Imperial County's motion to deny the transfer petition or adjourn this proceeding until IID approves the transfer project under CEQA. For the reasons set forth below, we disagree with Imperial County's argument that IID's project is not ripe for consideration.

We also make findings as required by CEQA based on the Final EIR for IID's Water Conservation and Transfer Project (FEIR). IID certified the FEIR, as the lead agency under CEQA, on June 28, 2002.

Finally, we address other public interest issues, the potential socio-economic impacts and impacts to fish and wildlife associated with fallowing land.

### 6.1 The SWRCB's Role as a Responsible Agency under CEQA

For purposes of considering whether to approve IID's and SDCWA's transfer petition, the SWRCB is a responsible agency under CEQA. (See Pub. Resources Code, § 21069.) In deciding whether and how to approve a project, a responsible agency must consider the environmental effects of the project as disclosed in the environmental documentation prepared by the lead agency. (Cal. Code Regs, tit. 14, § 15096, subd. (f).) Except under limited circumstances when a responsible agency may assume lead agency status or prepare subsequent documentation, a responsible agency must presume that the conclusions reached by the lead agency in its environmental documentation regarding the environmental effects of the proposed

project are adequate, or challenge the lead agency in court. (*Id*., subds. (e) & (f).) A responsible agency is responsible for mitigating or avoiding only the environmental effects of the parts of the project it decides to approve. (*Id.*, subd. (g)(1); see Cal. Code Regs., tit. 23, § 3751, subd. (a); Decision 1632, pp. 90-91.)

### 6.2 Imperial County's Motion to Deny the Transfer Petition or Adjourn this Proceeding Until IID Approves the Transfer Project under CEQA

A preliminary CEQA issue is Imperial County's argument that the transfer petition is not ripe for SWRCB action until IID approves the transfer project under CEQA. Although IID has certified the FEIR, it has not yet approved the project, made findings in connection with the approval, or issued a notice of determination, the final steps required under CEQA before IID may implement the project. (Cal. Code Regs., tit. 14, §§ 15091-15094.) Imperial County urges the SWRCB to deny the transfer petition or adjourn this proceeding until IID approves the project.

Imperial County has cited to no authority for the proposition that the SWRCB may not take action on the transfer petition before IID has approved the project. As a responsible agency, the SWRCB is only required to consider the FEIR prepared by IID in reaching the SWRCB's own conclusions on whether and how to approve the project. (Cal. Code Regs, tit. 14, § 15096; see also SWRCB Order WR 2000-13, p. 21.) Nothing in CEQA or the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000 -15387) requires a lead agency to approve a project before a responsible agency may approve the project in reliance on an EIR or negative declaration certified by the lead agency.

Imperial County also argues that, if the SWRCB approves the project before IID does, then the SWRCB will become the lead agency. Again, Imperial County has not cited to any authority that supports this argument. Section 15052 of the Guidelines sets forth the conditions when a responsible agency must assume the duties of a lead agency, and Imperial County acknowledges that none of those conditions exist in this case.

Under CEQA and the CEQA Guidelines, the timing of agency action is relevant to the issue of lead agency status only when the project proponent is not a governmental entity, and more than one governmental agency can claim to have primary responsibility for approving the project.

Under those circumstances, the first agency to act is the lead agency. (Cal. Code Regs., tit. 14, § 15051, subds. (b) & (c).) But in this case, the project will be carried out by IID, which is a public agency.[16]

In short, even though the SWRCB is taking action in reliance on the FEIR before IID, IID will remain the lead agency. As the lead agency, it is IID's responsibility to ensure that the FEIR complies with CEQA. (Cal. Code Regs., tit. 14, § 15090, subd. (a)(1).) As a responsible agency, the SWRCB must consider the FEIR prepared by IID. (*Id*., § 15096, subds. (a) & (i).)

Imperial County also contends that if the SWRCB approves the project and files a notice of determination before IID, the CEQA statute of limitations for challenges to the adequacy of the FEIR will begin to run, and the SWRCB will be forced to defend the adequacy of the FEIR in any judicial challenge under CEQA. But the SWRCB's approval of the project and filing of a notice of determination triggers only the statute of limitations for an action challenging the SWRCB's compliance with its duties, as a responsible agency, under CEQA. (See Pub. Resources Code, § 21167, subd. (e).) Those duties do not include responsibility for the adequacy of the FEIR. (See Cal. Code Regs, tit. 14, § 15096, subd. (e); *id*. § 15096, subd. (i) ["[T]he responsible agency does not need to state that the EIR . . . complies with CEQA."].) IID will remain the lead agency, and any action challenging the adequacy of the FEIR may be brought against IID. CEQA expressly provides that the period for filing an action challenging the adequacy of an EIR commences with the filing of a notice of determination "by the lead agency." (Pub. Resources Code, § 21167, subd. (c).) In the event that an action challenging the adequacy of the FEIR nonetheless is brought against the SWRCB, the SWRCB agrees with IID's position that IID must be named as a respondent or joined as an indispensable party, and that it would be incumbent on IID to defend the adequacy of the FEIR.

Finally, Imperial County contends that the SWRCB cannot make the findings required by the Water Code and other provisions of law, or the findings requested by petitioners, because the

[16] Similarly, neither of the cases cited by Imperial County addressed the circumstances in this case. In *Citizens Task Force on Sohio v. Board of Harbor Commissioners* (1979) 23 Cal.3d 812 [153 Cal.Rptr. 584], the project proponent was a private company. *Planning and Conservation League* v. *Department of Water Resources* (2000) 83 Cal.App.4th 892 [100 Cal.Rptr.2d 173] involved the issue whether the agency that had assumed lead agency status was the agency with primary responsibility for carrying out or approving the project in question. The case did *[footnote continues on next page]*

project has not been "fixed." Imperial County argues that IID may, under section 15132, subdivision (e) of the Guidelines, add more information to the FEIR between certification and final approval action. Imperial County alleges that when and if IID approves the project, it may be different from the project defined in the FEIR. The basis for Imperial County's argument appears to be that IID has not determined what combination of conservation measures IID will undertake, and to what extent IID will fallow land.

As explained in section 5, above, one component of the project described and assessed in the FEIR is a water conservation program, which includes a number of different conservation measures, including fallowing. (IID 55, pp. 2-1 – 2-34.) IID has not specified the exact combination of conservation measures that IID will implement, however, in order to allow for variation over time and the flexibility to adapt to changed circumstances. (*Id*. at pp. 2-8, 2-31.)[17] Thus, one flaw in Imperial County's argument is that IID is not likely to change the project description to more specifically define the combination of conservation measures when it approves the project under CEQA.[18]

It also bears emphasis that the issue of whether the project has been adequately defined for purposes of CEQA is distinct from the issue of whether the project has been adequately defined for purposes of making the findings required under the Water Code in order to approve the transfer. As explained earlier, it is IID's responsibility, as lead agency, to ensure that the FEIR complies with CEQA. It is the SWRCB's responsibility to make the findings required by the Water Code.

The definition of the water conservation program contained in the FEIR is adequate for the SWRCB's purposes in reviewing the transfer petition under the Water Code because IID has assessed the range of potential environmental and socio-economic impacts associated with the

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not involve the question whether an agency that is otherwise properly designated as the lead agency will lose lead agency status if the agency does not approve the project before any other discretionary approvals are issued.

[17] In addition, the extent to which it may be necessary to fallow land in order to mitigate the environmental impacts of the transfer will not be certain until IID obtains the approvals necessary to implement the transfer, including the approval of the SWRCB and incidental take permits from DFG and USFWS.

[18] It should be noted that a water project may not be "fixed," even when the lead agency issues its approval. A water project operator may make further changes or adjustments in the course of project implementation, so long as those changes are within the scope of the SWRCB's approval and do not violate any conditions of approval, although some of those changes may trigger SWRCB review under its continuing authority.

conservation measures identified. The FEIR analyzes the "worst-case scenario" for each of the conservation measures that IID is considering implementing, including on-farm conservation methods, delivery system improvements, and fallowing. Generally, on-farm and delivery system improvements have a greater adverse effect on the environment, but fallowing has a greater adverse socio-economic effect on Imperial County. As a result, the FEIR fully discloses the full range of significant environmental and socio-economic impacts of the project.

In summary, the SWRCB has been provided sufficient information to determine whether the project will unreasonably affect fish, wildlife, and other instream beneficial uses, and whether the transfer will be in the public interest, based on the range of potential impacts described in the FEIR. Accordingly, the fact that IID has not specified the exact combination of conservation measures that it intends to implement does not prevent action by the SWRCB. In order to ensure, however, that the SWRCB does not approve a project that is ultimately disapproved by IID, our approval will not become effective until IID has approved the project and issued a Notice of Determination under CEQA. In addition, we will reserve continuing authority to consider any new information that may become available if IID revises, amends or supplements the FEIR before it approves the project, or to consider whether any changes to this order may be appropriate in the event that, upon project approval, IID makes substantial changes to the project.

### 6.3 Compliance with the California Environmental Quality Act

This section addresses the SWRCB's responsibilities as a responsible agency under CEQA, discusses significant environmental impacts identified in the FEIR, and makes the mandatory findings required by CEQA. CEQA establishes a duty for public agencies to minimize environmental damage if feasible. (Cal. Code Regs., tit. 14, §§ 15091, 15096, subd. (g)(2).) For each significant environmental effect identified in the FEIR that is within the SWRCB's area of responsibility as a responsible agency under CEQA, the SWRCB must make one or more of the following findings: (1) changes have been required in the project that mitigate or avoid the significant effect, (2) such changes are within the responsibility and jurisdiction of another public agency and have been or can and should be adopted by that agency, or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures identified in the FEIR infeasible. (Pub. Resources Code, §§ 21002.1, 21081; Cal. Code Regs, tit. 14, §§ 15091, 15093.)

If a public agency makes changes or alterations in a project to mitigate or avoid the significant adverse environmental effects of the project, it must adopt a monitoring or reporting program to ensure compliance with the changes or alterations. (Cal. Code Regs, tit. 14, § 15091, subd. (d).) This order contains terms and conditions to implement a mitigation and monitoring plan for mitigation measures required to avoid or lessen significant environmental effects of the SWRCB's approval of the project that are within the SWRCB's responsibility. Additionally, this order requires IID to report to the Chief of the Division of Water Rights annually on its activities under the mitigation and monitoring plan and on the implementation of each measure. Finally, this order identifies significant effects on the environment that are unavoidable but are acceptable due to overriding considerations. The FEIR certified by IID on June 28, 2002, identifies the following significant effects that are within the SWRCB's control: Impacts to Hydrology and Water Quality; Impacts to Agricultural Resources; Impacts to Recreation; and Impacts to Air Quality.

### 6.3.1 Summary of Significant Impacts and Mitigation Measures

The following table, "Summary of Significant Impacts and Mitigation Measures," indicates the impacts of the proposed transfer that IID has identified as significant in its FEIR and that are within the SWRCB's area of responsibility. Where mitigation is available and feasible, the table also briefly describes the mitigation measures identified in the FEIR for each impact. The SWRCB will require that the mitigation measures be implemented as shown on the table and discussed below.

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| Impact Code | Summary | Impact | Mitigation Identified by IID and the SWRCB |
|---|---|---|---|
| **BR-1** | **Reduced flow levels in the LCR could reduce the acreage of cottonwood-willow communities** | Less than significant impact with implementation of biological conservation measures | USBR will mitigate the impacts along the lower Colorado River by replacing cottonwood-willow habitat occupied by willow flycatchers that may be affected by reduced flows, monitor the results and potentially increase the amount of this habitat. |
| **BR-4** | **Reduced flow levels in the LCR could reduce the acreage of backwater habitat** | Less than significant impact with implementation of biological conservation measures | USBR will restore or create 44 acres of backwater habitat along the lower Colorado River between Parker and Imperial Dams to mitigate for the affects of reduced flows. |
| **BR-5** | **Reduced acreage of cottonwood-willow vegetation could affect special-status species** | Less than significant impact with implementation of biological conservation measures | USBR will mitigate the impacts along the lower Colorado River by replacing cottonwood-willow habitat occupied by willow flycatchers that may be affected by reduced flows, monitor the results and potentially increase the amount of this habitat. |
| **BR-6** | **Reduced acreage of open water in backwaters could affect special-status wildlife species** | Less than significant impact with implementation of biological conservation measures | USBR will restore or create 44 acres of backwater habitat along the lower Colorado River between Parker and Imperial Dams to mitigate for the affects of reduced flows. |
| **BR-7** | **Reduced acreage of emergent vegetation in backwaters could affect special-status species** | Less than significant impact with implementation of biological conservation measures | USBR will restore or create 44 acres of backwater habitat along the lower Colorado River between Parker and Imperial Dams to mitigate for the affects of reduced flows. |
| **BR-8** | **Reduced acreage of aquatic habitat could affect special-status fish species** | Less than significant impact with implementation of biological conservation measures | USBR will restore or create 44 acres of backwaters. They will also re-introduce and monitor 20,000 sub-adult razorback suckers below Parker Dam and continue a study of Lake Mead. USBR will also fund the capture of wild bonytail chubs that will be broodstock for this species. |

| Impact Code | Summary | Impact | Mitigation Identified by IID and the SWRCB |
|---|---|---|---|
| **BR-11** | **Increased salinity in the drains could alter drain vegetation and affect wildlife** | Less than significant impact with implementation of the measures identified in the HCP | IID will create up to 652 acres of managed marsh habitat that is expected to support a larger population of Yuma clapper rails than currently exist. |
| **BR-12** | **Changes in water quality in drains could affect wildlife** | Less than significant impact with implementation of the DHCS | Implementation of the DHCS to offset the increased selenium concentrations that could affect the reproductive success of bird species. |
| **BR-24** | **Reduced flows in the drains could affect desert pupfish** | Less than significant impact with implementation of the measures identified in the HCP | Implement desert pupfish conservation strategy where appropriate to decrease the effects on the species. |
| **BR-25** | **Construction of system-based measures could affect razorback suckers** | Less than significant impact with implementation of the measures identified in the HCP | Implement razorback sucker conservation strategy measures to minimize mortality of suckers as a result of canal dewatering. Salvaged fish will be returned to the lower Colorado River. |
| **BR-26** | **Water quality changes in the drains could affect special-status species** | Less than significant impact with implementation of the DHCS | Implement DHCS as outlined in the HCP. IID will monitor to ensure that the amount of managed marsh habitat is sufficient to offset the selenium impacts from the transfer. |
| **BR-27** | **Changes in drain habitat could affect special-status species** | Less than significant impact with implementation of the DHCS | Implement DHCS as outlined in the HCP. IID will monitor to ensure that the amount of managed marsh habitat is sufficient to offset the selenium impacts from the transfer. |
| **BR-46** | **Reduced fish abundance would affect piscivorous birds** | Less than significant impact with implementation of the SSHCS | Implementation of SSHCS would avoid impacts to fish and birds since salinity impacts would be avoided for 15 years. |

| Impact Code | Summary | Impact | Mitigation Identified by IID and the SWRCB |
|---|---|---|---|
| **BR-51** | **Increased salinity could isolate drains supporting desert pupfish** | Less than significant impact with implementation of the SSHCS | Impacts to pupfish populations may not be affected by the proposed project for 15 years as a result of implementation of the SSHCS. Because of their high salinity tolerance, the Sea will not be a barrier to pupfish for at least 15 years. |
| **AR-1** | **Reclassification of up to 50,000 acres of prime farmland or farmland of statewide importance** | Significant, unavoidable impact | Refer to section 6.3.6 and section 6.3.9 of this order. |
| **HCP-AR-2** | **Conversion of agricultural lands from implementation of the HCP** | Significant, unavoidable impact | Refer to section 6.3.6 and section 6.3.9 of this order. |
| **R-7** | **Reduction on Salton Sea elevation would render boat launching and mooring facilities inoperable** | Less than significant impact with mitigation | With SSHCS elevation of the Salton Sea may not decline for 15 years. To the extent that a decline in elevation impacts boat launching facilities, these facilities may be temporarily relocated until the Sea reaches its minimum and stable elevation, at which point permanent facilities must be provided. |
| **R-8** | **Reduced sport fishing opportunities** | Significant, unavoidable impact | Refer to section 6.3.7 and section 6.3.9 of this order. |
| **R-9** | **Reduced opportunity for bird watching and waterfowl hunting** | Less than significant impact with mitigation | Implementation of SSHCS may avoid impacts to bird watching since salinity impacts would be avoided for 15 years. |
| **R-10** | **Reduction in Salton Sea elevation could impact campgrounds and ancillary facilities** | Less than significant impact with mitigation | No impacts to elevation are expected for 15 years. See Mitigation Measure R-7. |
| **AQ-3** | **Windblown dust from fallowed land** | Less than significant impact with mitigation | IID will implement one or more of the BMPs outlined in Mitigation Measures AQ-2 and AQ-3 of the EIR. Refer to section 6.3.8.1 of this order. |

| Impact Code | Summary | Impact | Mitigation Identified by IID and the SWRCB |
|---|---|---|---|
| **HCP2-AQ-6** | **Windblown dust from fallowing as well as emissions resulting from construction and operation of on farm and water delivery system conservation measures for SSHCS (This is a secondary impact of mitigation)** | Less than significant impact with mitigation | IID will implement one or more of the BMPs outlined in Mitigation Measures AQ-2 and AQ-3 of the EIR. |
| **AQ-7** | **Indirect air quality impacts due to the potential for windblown dust from exposed shoreline** | Potentially significant unavoidable impact | Refer to section 6.3.8 and section 6.3.9 of this order. |
| **A-1** | **Impacts on aesthetics would occur from a drop in the level of the Salton Sea** | Less than significant impact with mitigation | Salton Sea elevation may not drop for 15 years, therefore aesthetics would not be affected until that time. Mitigation Measures outlined in A-1 will reduce these to less than significant after that time. |

### 6.3.2 Impacts that Will Be Reduced to Less Than Significant Levels with Mitigation

The following impacts will be reduced to less than significant levels if mitigated as outlined on the table: BR-1, BR-4, BR-5, BR-6, BR-7, and BR-8. These impacts all affect the lower Colorado River. The FEIR states that the USBR will mitigate these impacts. Implementation of the identified mitigation measures is within the USBR's responsibility and the USBR can and should implement them. To the extent that the USBR does not fully implement these mitigation measures, we will reserve continuing authority to require IID to implement them to the extent feasible.

The following impacts within IID's service area are also less than significant if mitigated: BR-11, BR-12, BR-24, BR-25, BR-26, and BR-27. We will require that IID implement the Drain Habitat Conservation Strategy, the Desert Pupfish Conservation Strategy, and the Razorback Sucker Conservation Strategy as mitigation for these impacts.

Finally, the following impacts to recreation, air quality and aesthetics are less than significant if mitigated: R-7, R-10, AQ-3, HCP2-AQ-6, and A-1. We will require that IID implement the mitigation measures identified in the FEIR and summarized on the table.

### 6.3.3 Impacts for Which Mitigation Is Unavailable or Infeasible

The FEIR identifies the following impacts as significant, unavoidable impacts for which no mitigation is available or feasible: AR-1, HCP-AR-2, R-8, and AQ-7. These impacts are discussed in detail in other parts of this order.

### 6.3.4 Impacts That May Be Avoided for 15 Years

This order requires IID to maintain for 15 years salinity levels in the Salton Sea that would have occurred in the absence of the project. We anticipate that water elevation levels will follow the trajectory shown on figure 3.3-1 of the FEIR and reproduced in section 5.2.4 of this order. Therefore, the following impacts may be avoided for the first 15 years of this project: BR-46, BR-51, R-8, and R-9. Because the SWRCB is reserving continuing authority to amend the conditions specified in this order after 15 years, we may consider other actions to mitigate these impacts in the future.

### 6.3.5 Impacts to Hydrology and Water Quality

The FEIR states that increased selenium concentrations are a significant and unavoidable impact. As discussed in section 5, IID proposes to mitigate impacts of increased selenium by creating sufficient alternate habitat to offset reduced reproductive output of wildlife using the drains. The HCP proposes that up to 652 acres of managed marsh habitat be created to mitigate the biological impacts of selenium. By this order, the SWRCB will impose the requirement that up to 652 acres of managed marsh replacement habitat be created. By creating alternate habitat with better water quality, the combined reproductive output of wildlife in the drains plus the alternate habitat will not change. Thus, some of the biological impacts of selenium will be mitigated. We recognize, however, that selenium concentrations will not be reduced as a result of implementing the measure in the HCP, and that there will still be impacts associated with high selenium concentrations in the drains and the outlets to the Sea.

Therefore we will require that IID, in consultation with DFG, the Regional Board, and the USEPA, prepare a plan acceptable to the Chief of the Division of Water Rights to study the local practices and projects that result in the concentration of selenium discharged to the affected water bodies. Upon the approval of the study plan by the Division Chief, IID shall complete the study, prepare a report summarizing the results of the study and recommending ways of reducing selenium discharges to levels that meet the water quality objectives. IID shall work cooperatively with the Regional Board to implement the recommended actions that are within the control of IID.

With respect to the mass loading of selenium, the Regional Board is directed to address this issue through the Total Maximum Daily Load (TMDL) process or any other appropriate process. The Regional Board states that "the proposed selenium TMDL would focus on selenium throughout the Upper and Lower Colorado River Basin States (Colorado River Watershed), and would address selenium reduction at the sources, but could also include management practices to address concentrating of selenium in Imperial Valley." (IID 93, p. 3-9.)

### 6.3.6 Impacts to Agricultural Resources

Examples of significant environmental effects on agricultural resources include the following: (1) conversion of prime farmland, unique farmland, or farmland of statewide importance to

non-agricultural use, (2) conflict with existing zoning for agricultural use, or a Williamson Act contract, and (3) other changes in the existing environment, which, due to their location or nature, could result in conversion of farmland to non-agricultural use. (See CEQA Guidelines, *supra*, appendix G.)

If fallowing were used as a conservation measure, it could be rotational, permanent or a combination of the two. As identified in the FEIR, the worst-case impact of the proposed project would be the permanent fallowing of up to 75,000 acres of farmland in the IID service area. This represents up to about 15 percent of the total net acreage in agricultural production within the IID water service area. (Audubon 18, pp. 21-22.) The FEIR finds that permanent fallowing to this extent would result in a significant, unavoidable impact. The only mitigation measure proposed to avoid or minimize this impact is to prohibit the use of permanent fallowing under the proposed project. Permanent fallowing could increase the likelihood of land, especially land in close proximity to urban areas, being converted to a non-agricultural use. On the other hand, permanently fallowed farmland could be converted for system improvements such as canals, or other uses in support of on-farm irrigation system or water delivery system improvements. These changes would not result in an impact to agricultural resources as the land use would not be reclassified as non-agricultural, and thus the change would not affect the land's status under the Williamson Act.

It is likely that fallowing will occur on a temporary basis and may be combined with other conservation measures to further lessen the acreage that would be fallowed at any given time. Although impacts to agricultural resources are not likely to be as severe as the worst-case impact identified in the FEIR, we recognize that significant, unmitigable impacts may occur.

### 6.3.7 Impacts to Recreation

The Salton Sea currently supports a fishery, with 400,000 visitors using the Sea for sport fishing every year. Reduced inflows to the Salton Sea resulting from the proposed project will result in reduced water level elevations. This can impact recreational use of the Sea by making recreational facilities inaccessible to users. The FEIR indicates that these facilities can be moved so that they are located adjacent to the shoreline of the Sea during and after the elevation declines. These

actions should fully mitigate the impacts to recreation that will result from changes in the Sea's elevation.

Reduced inflows could also result in an accelerated increase in salinity in the Salton Sea. As salinity levels in the Sea approach and then exceed the salt tolerance of the various fish species, the fishery will first decline and then be eliminated. Species such as tilapia and desert pupfish have greater salinity tolerances, and they are expected to survive in the Sea longer than other species that reside in the Sea. However, as discussed in section 5 of this order, it is expected that at a salinity of 60 ppt, tilapia will no longer be able to reproduce. Once the fishery declines, associated recreational activities dependent on the fishery such as fishing and bird-watching will be adversely affected.

This order requires that IID maintain for 15 years the salinity of the Sea at the forecasted mean salinity level that would occur in the absence of the project. To the extent that the salinity level of the Sea increases at a faster rate after 15 years than it would have in the absence of the proposed project, the proposed project will result in unavoidable significant impacts to recreation.

### 6.3.8 Impacts to Air Quality

This section discusses the impacts of the proposed project on air quality. Of particular concern is the potential emission of small particles with a diameter of less than 10 micrometers. These particles, referred to as PM10, can adversely affect human and animal health because they lodge in small passages in the lungs and affect respiration. (R.T. pp. 35-37.) The impacts to air quality of the proposed transfer depend on the method that IID employs to conserve water in order to implement the proposed transfer. If IID employs efficiency measures, such as tailwater recovery systems, this will reduce Sea elevations, exposing shoreline, which could result in significant air quality impacts. Alternatively, if IID fallows land in order to conserve water to implement the transfer, less shoreline will be exposed, but other impacts within IID may occur as discussed below.

#### *6.3.8.1 Air Quality Impacts of Fallowing*

Fallowing of lands in the IID service area is one of the water conservation methods that may occur under the proposed project and as part of the SSHCS. Parties presented testimony at the hearing

regarding the air quality impacts of fallowing. This issue is quite complicated and the potential impacts cannot be determined with any certainty. On the one hand, particulate emissions, including PM10 emissions, could decrease because the fallowed land would be not be subject to disturbance due to plowing or other agricultural practices that disturb soil. On the other hand, fallowed lands may be subject to wind erosion, creating fugitive dust impacts unless actions are taken to reduce these effects. As discussed in the FEIR (IID 93, p. 3-54) it is not possible to qualitatively estimate dust/PM10 emissions associated with fallowing. The EIR concluded that there is a potential for significant unavoidable impacts associated with fallowing unless BMPs are implemented. These could include, but are not limited to, the following: implement conservation cropping sequences and wind erosion protection measures as outlined by the U.S. Department of Agriculture Natural Resources Conservation Service; apply soil stabilization chemicals to fallowed lands; re-apply drain water to allow protective vegetation to be established; or reuse irrigation return flows to irrigate windbreaks across blocks of land including many fields to reduce emissions from fallowed, farmed, and other lands within the block. If BMPs such as these are implemented, then emissions would be reduced to less than significant.

The IID service area is under the jurisdiction of the Imperial County Air Pollution Control District (ICAPCD). As a result of the area's designation as a federal moderate non-attainment area for PM10, the ICAPCD has published a State Implementation Plan (SIP) for PM10 in the Imperial Valley (ICAPCD 1993). (IID 93, pp. 3-53, 3-64.)[19] The SIP will demonstrate ICAPCD's proposed control measures, methods, and schedule for attainment of the applicable ambient air quality standards, and the ICAPCD Rules and Regulations will be revised to implement the required control measures. By this order we will require that IID comply with all applicable requirements of the final updated SIP and implement the mitigation measures and BMPs for air quality impacts associated with fallowing as outlined in the FEIR. Implementation of these measures and BMPs should reduce the effect of the proposed project on air quality as a result of changes in agricultural practices to less than significant levels.

[19] Although the EIR states that the area is currently in federal moderate non-attainment (IID 93, p. 3-53; IID 55, p. 3.7-13), Imperial County's witness testified that USEPA currently ranks the area as in attainment, but for emissions from Mexico. (R.T. p. 2103.)

### *6.3.8.2 Shoreline Exposure*

Parties presented considerable testimony concerning the possibility that emissive sediments will be exposed as inflows to the Sea are reduced and the water level in the Sea declines. Once again, the testimony was inconclusive. With implementation of the SSHCS, we do not expect the project to cause air quality impacts during the first 15 years of this project. The water level and the total surface area of the Salton Sea would, however, decrease in the long term, unless a restoration program is developed that prevents that decrease. In light of the potential for shoreline exposure, resulting in potentially significant impacts, we will require that IID follow the monitoring and mitigation plan as outlined in the FEIR. (IID 93, p. 3-50 – 3-52.) This requires a phased approach to addressing the problem, including ongoing monitoring. The four-step plan is as follows: (1) restrict access to minimize disturbance of exposed shoreline, (2) conduct an ongoing research and monitoring program as the Sea recedes, (3) create or purchase offsetting emission reduction credits, and (4) direct emission reductions at the Sea. Step four could include implementing feasible dust mitigation measures or supplying water to re-wet emissive areas of the Sea.

The air quality impacts of exposed shoreline associated with the proposed project are difficult to predict using existing studies and technology. We accept the phased approach proposed in the Monitoring and Mitigation Plan (IID 93, pp. 3-50 – 3-52) for mitigation of potential shoreline exposure effects. The FEIR calls for incremental implementation of the plan as shoreline is exposed. In order to develop an adequate baseline, this order requires that step two of the plan, research and monitoring, be implemented within six months of the effective date of this approval. The ICAPCD and the South Coast Air Quality Management District (SCAQMD) have jurisdiction over different parts of the Salton Sea geographical region. (IID 93, p. 3-64.) This order delegates to the Division Chief the authority to determine, in consultation with the ICAPCD, the SCAQMD, and the California Air Resources Board, whether any mitigation measure identified as part of the four-step plan is feasible.[20] With this mitigation measure, we believe that the impacts to air quality due to exposed shoreline will be less than significant. Nonetheless, the FEIR states that dust emissions from shoreline exposure is a potentially significant, unavoidable impact.

[20] Nothing in this order, including this delegation, limits or supersedes the independent authority of the ICAPCD, the SCAQMD, or the California Air Resources Board. This order specifies that IID must comply with all applicable requirements of the ICAPCD's and the SCAQMD's SIPs and PM10 rules.

### 6.3.9 Statement of Overriding Considerations

This order imposes conditions of approval to mitigate the potential adverse effects of the conservation and transfer project. Nevertheless, for the following potential significant adverse environmental effects of the project as approved by this order, other parties are responsible for carrying out potential mitigation measures or overriding considerations outweigh the potential significant adverse effects:

- Potential impacts to habitat along the lower Colorado River. Mitigation measures are to be implemented by the USBR. If the USBR does not implement these mitigation measures, we will require IID to implement those measures that are within IID's authority to implement. To the extent that IID can not implement these measures and impacts occur, the SWRCB finds that the overriding considerations discussed below outweigh the impacts.

- Potential impacts to water quality, especially as a result of increased levels of selenium in agricultural drains and increased salinity at the Salton Sea. Mitigation measures are required by this order. To the extent that impacts occur, the SWRCB finds that the overriding considerations discussed below outweigh the impacts.

- Potential short-term impacts to agricultural resources in Imperial County are unavoidable and unmitigable, and the SWRCB finds that overriding considerations discussed below outweigh the impacts.

- Potential impacts to the Salton Sea fishery, piscivorous birds, and to recreation at the Sea after water level elevations decline and salinity increases. This order requires full mitigation for these impacts for 15 years. After the 15-year mitigation period required by this order, the SWRCB finds that the overriding considerations discussed below outweigh any impacts that may occur.

- Potential impacts to air quality due to shoreline exposure at the Salton Sea. We expect that these impacts will be mitigated to less than significant levels by IID. Nonetheless, the FEIR

finds that air quality impacts from shoreline exposure are potentially significant and unavoidable. To the extent that impacts are unmitigable and unavoidable, the SWRCB finds that the overriding considerations discussed below outweigh the impacts.

The benefits of this project to the public, the uncertainties regarding the feasibility of restoring the Sea, and the potential impacts to the State if the project is not approved are discussed at length in section 5.2 of this order. The SWRCB finds that the benefit of a reliable Colorado River water supply under the USBR's Interim Surplus Criteria are critically important to the people of the State. The California Water Plan identifies the Colorado River as a source of supply for Southern California. In the absence of the proposed transfer, the State may be required to immediately reduce its diversions from the Colorado River by approximately 800,000 acre-feet of water per year. The only infrastructure currently in place that could provide an alternative source of water is the State Water Project, which diverts water from the Sacramento-San Joaquin Delta Estuary. Increased diversion from the Bay-Delta could have negative impacts on fish and wildlife resources that rely on the Bay-Delta, and the resulting measures to protect threatened and endangered species under the CESA and the federal ESA could result in severe and unpredictable water shortages throughout the State. At the same time, there are many uncertainties regarding the feasibility of restoring the Salton Sea. Unless and until a feasible restoration plan can be developed, the Sea is ultimately imperiled. Therefore, to the extent that this order does not fully mitigate the adverse effects of this action, the environmental, economic, and social benefits of implementing the conservation and transfer project outweigh the potential adverse environmental effects that are not avoided or fully mitigated.

### 6.4 Socio-Economic Impacts Should Be Reduced or Mitigated to the Extent Feasible

To the extent that IID fallows land in order to conserve water to transfer, or to mitigate the environmental impacts of the transfer, the transfer may adversely affect the local economy within Imperial County.

The SWRCB has authority to consider whether the transfer would be in the public interest in view of the potential socio-economic impacts of fallowing. In evaluating proposed changes in a water

right permit or license, including changes that will allow a transfer to take place, the SWRCB considers the same factors that it considers when evaluating a water right application, including whether the changes will be in the public interest. (See Wat. Code, §§ 1253, 1255, 1256; *Johnson Rancho County Water Dist. v. State Water Rights Board* (1965) 235 Cal.App.2d 863, 874 [45 Cal.Rptr. 589]; Order WR 95-9, p. 29; Revised Decision 1641, pp. 117, 123-124, 129.)[21]

As summarized below, the record indicates that the economic impacts may not be as significant as estimated by IID. In addition, in determining whether the transfer would be in the public interest, the SWRCB also must consider the benefits of the transfer, which, as discussed above, is an integral part of California's Colorado River Water Use Plan. (See Wat. Code, § 1256 [in considering whether an appropriation would be in the public interest, the SWRCB must consider the California Water Plan; SDCWA 5, pp. 4-5 [Colorado River Water Use Plan is incorporated into the California Water Plan].)

The record also indicates, however, that it may be feasible to minimize potential economic impacts, and to mitigate those impacts that cannot be eliminated. We conclude that the transfer will be in the public interest, notwithstanding the potential socio-economic impacts associated with fallowing, but that socio-economic impacts should be minimized and mitigated to the extent feasible. SB 482 (Stats. 2002, ch. 617), provides a process for evaluating and mitigating any economic impacts of the transfer. We will reserve continuing authority to consider whether any additional measures should be taken based on the analysis and recommendations developed as part of that process.

[21] SDCWA contends that no legal basis exists for considering socio-economic impacts because Water Code section 1736 does not expressly provide for an evaluation whether a long-term change will be in the public interest. In contrast to the provisions of the Water Code governing short-term transfers, however, section 1736 does not require the SWRCB to approve a long-term transfer even if the requirements for protecting third-party water right holders and instream beneficial uses are satisfied. (Compare Wat. Code, § 1727, subd. (b) [the SWRCB "shall approve" a short-term transfer if specified conditions are met], with *id*. § 1736 [the SWRCB "may approve" a long-term transfer if specified conditions are met].) In purpose and effect, a long-term change is an amendment to a permit or license. Except in the case of short-term transfers, where expedited approval is required, the language of the Water Code does not require, and sound public policy does not support, a construction that precludes the SWRCB from considering the public interest as part of its review of a change petition when the SWRCB would be required to consider the public interest if the change had been proposed as part of the original application. The SWRCB is also mindful that it is the official policy of the State to facilitate voluntary water transfers "where consistent with the public welfare of the place of export and the place of import." (Wat. Code, § 109, subd. (a); see also Wat. Code, § 174 [the SWRCB exercises the adjudicatory and regulatory functions of the State in the field of water resources].)

Based on the analysis of socio-economic impacts contained in the FEIR, IID estimated that if water is conserved exclusively through fallowing, annual losses to the personal income of employees and business owners in Imperial County could be $5,000,000 per year during the first six years of the transfer, and could eventually reach $30,000,000 per year if the full 300,000 afa were conserved by fallowing. (IID 65, p. 8; R.T. pp. 953-954.) In addition, the economic stimulus expected from a conservation program that does not include fallowing would be foregone. IID estimated that if a conservation program that does not include fallowing were implemented, personal income would increase by as much as $25,000,000 annually. (IID 65, p. 7; R.T. p. 953.)

Similarly, the FEIR estimated that if 300,000 afa is conserved through fallowing, approximately 1,400 jobs would be lost, whereas approximately 700 jobs would be created if the water is conserved without fallowing. (IID 55, pp. 3.14-17 – 3.14-18.) Imperial County already has a high unemployment rate relative to the State average. (*Id*. at p. 3.14-5.) Fallowing land could also adversely affect local government by reducing property tax and sales tax revenues. (Imperial County 3A, p. 2.)

The record indicates that the potential economic impacts of fallowing may not be as significant as IID estimated. The analysis performed in the FEIR and by IID assumed that different types of crops would be fallowed in proportion to the historic mix of crop types. Economic impacts would be reduced, however, if a higher proportion of less valuable, less labor-intensive, high water use crops such as alfalfa hay were fallowed. (R.T. pp. 2554, 2615-2617.) IID estimated that, if 300,000 afa were conserved by fallowing alfalfa exclusively, the loss in personal income would be approximately $6,700,000, one-fourth to one-fifth the personal income lost if the full mix of crops were fallowed. (IID 65, pp. 11-12.) Similarly, the number of jobs lost would be approximately one-third the number of jobs that would be lost if the full crop mix were fallowed. (*Id*. at p. 13.)

The economic impacts of fallowing also might be reduced to the extent that less productive soils are fallowed. (R.T. pp. 1016, 1049.) In addition, by fallowing on a temporary basis, it may be possible to avoid the impacts to soil productivity and property values that could result from long-term fallowing. (R.T. 1013-1014, 2167-2168, 2549, 2568-2569; SDCWA 49, pp. 2-3.)

Finally, in estimating losses in personal income and jobs, IID did not take into account the economic benefits of mitigating impacts to the Salton Sea. (R.T. p. 1025.) Based on a 1987 survey, the FEIR estimates that recreational activity at the Sea could generate as much as $80,000,000 in business output per year. (IID 55, pp. 3.14-24 – 3.14-25; see also R.T. pp. 990-995.) Based on that estimate, the present value of the lost business output that would result from accelerating the demise of sportfishing and other recreational activities by eleven years is approximately $790,000,000. (*Ibid*.)

IID questioned whether a higher proportion of alfalfa would be fallowed because retaining alfalfa in a farmer's crop rotation diversifies risk and maintains soil productivity. (IID 65, pp. 10-11.) In a two-year test fallowing program conducted by MWD and PVID, however, the primary crops displaced were alfalfa and wheat. (PCL 31, p. 10.) In that case, alfalfa was not fallowed exclusively, but the percentage of alfalfa that was fallowed (approximately 64 percent) was high relative to the percentage of acres planted in alfalfa in the year preceding the program (approximately 45 percent). (IID 81; R.T. pp. 2794-2795.)

SDCWA and PCL introduced evidence concerning the PVID test program, which was conducted in the early 1990s, as an example of a fallowing program that did not have significant economic impacts. As part of the program, farmers within PVID fallowed approximately 20,215 acres, which resulted in a water savings of approximately 186,000 acre-feet over two years, for which MWD received credit. (PCL 31, p. i; SDCWA 48, p. 2.) According to a study prepared by consultants for MWD, the program did not have a significant effect on the local economy as a whole, although it did adversely affect businesses that provide services or supplies to farmers. (PCL 31, pp. i-ii; SDCWA 48, pp. 2-3; R.T. pp. 2546-2547.) The study found that the program resulted in the loss of 59 jobs. (PCL 31, p. i; R.T. p. 2622.)

IID criticized the methodology employed in the study of the PVID test program, and questioned the relevancy of the PVID program to a fallowing program in IID in view of differences between the two agricultural districts. (R.T. pp. 2789-2796.) We recognize that the PVID program may not reflect precisely what the economic impacts of a fallowing program within IID would be. But the

program indicates that the economic impacts of fallowing may be minimized if a higher proportion of particular crops such as alfalfa are fallowed.

Due to the success of the test program, MWD and PVID are currently negotiating a 35-year temporary fallowing program. (R.T. pp. 2546-2549.) MWD and PVID are in the process of studying the potential, socio-economic impacts of the program. In order to mitigate socio-economic impacts, MWD proposes to establish a fund of approximately $6,000,000 for community improvement projects, which would be administered by a committee comprised of representatives from MWD, PVID, and members of the Palo Verde Valley community. (SDCWA 50, pp. ES-3 - ES-4, 3-4; R.T. pp. 2563-2564.)

SB 482 requires the Resources Agency and the Technology, Trade and Commerce Agency to submit to the Legislature by June 30, 2003, a report prepared in consultation with IID and Imperial County, which evaluates: (1) the nature and extent of any economic impacts of land fallowing in Imperial County in connection with the QSA, (2) measures taken by IID to minimize economic impacts, (3) and the extent to which funds in excess of the funds received by IID for water transferred may be necessary to mitigate economic impacts. (Stats. 2002, ch. 617, § 9.) If additional funds are necessary, the report is to make recommendations regarding providing the additional funds, and formulating a program to administer the funds. (*Ibid*.)

SB 482 provides a mechanism for addressing the potential socio-economic impacts of the transfer. We will reserve continuing authority pending the outcome of the report described above to consider whether any additional measures should be required in the public interest to minimize or mitigate for economic impacts.

### 6.5 Potential Impacts of Fallowing on Fish and Wildlife that Rely on Agricultural Fields

Agricultural fields provide foraging and resting opportunities for a number of species of special status as well as common avian species. (IID 93, p. A3-166.) Most crops in IID are flood irrigated. This process provides standing water in agricultural fields that bird species can take advantage of. White faced ibis, cattle egrets and mountain plovers all frequent these fields, foraging on invertebrates, while geese will often forage directly on the crops being grown. (IID 55, p. 3.2-49.)

Burrowing owls often use the embankments of irrigation and drainage ditches for their burrows, and forage for mammals in adjacent agricultural fields. (IID 93, p. A3-147.) Some species also find refuge in small wetland areas formed by water that seeps from IID's delivery and drainage system canals. (IID 55, pp. 3.2-23 – 3.2-24.)

Agricultural acreage in IID approaches 500,000 acres in some years, and is expected to remain stable into the future under baseline conditions. Should a fallowing program generate the whole quantity of water necessary for transfer and mitigation, approximately 15 percent of the farmland in IID would be idled at any given time. This could affect the ability of some species to find adequate forage, depending on the crop types fallowed and the food preferences of those species.

Though agricultural field habitat will be lost when land is idled, it will be replaced when it is no longer necessary to fallow land to generate water. The Salton Sea and its surroundings provide rare and irreplaceable habitat, which requires a constant and relatively steady supply of inflow. The loss of 15 percent of one habitat type must be balanced, in this case, with the near total loss of a much larger and more rare habitat type. We find that the transfer is in the public interest, notwithstanding the potential loss of habitat that may occur if agricultural fields in IID are fallowed to provide water for transfer, or to mitigate the impacts of the transfer on the Salton Sea.

## 7.0 ADDITIONAL FINDINGS REQUESTED BY PETITIONERS

In addition to approving the transfer petition, petitioners have requested the SWRCB to make additional findings of fact and conclusions of law. These requests are addressed below.

### 7.1 This Order Is Designated as Non-Precedential

Petitioners have requested that the SWRCB make this order and all findings of fact and conclusions of law non-precedential. We agree to this request.

Government Code section 11425.60, subdivision (b) provides that an agency "may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur." Whether to designate an order or decision as precedent is discretionary and is not subject to judicial review. (*Ibid.*)

The SWRCB's determination not to designate this order as precedential is a condition of the protest dismissal agreement between IID, SDCWA, MWD and CVWD. MWD and CVWD have taken the position that the SWRCB's authority to take action on the transfer petition is preempted by the Law of the River. In view of the statewide importance of the transfer and California's Colorado River Water Use Plan, however, MWD and CVWD agreed not to object to the transfer or this proceeding, provided, among other things, that the SWRCB's order is not designated as precedential. (IID 23; R.T. pp. 72-77.)

Imperial County argues that the SWRCB's order in this proceeding should not be designated as precedential as to jurisdiction, but precedential on the merits because of the significance of this proceeding and the potential for this transfer to serve as a model for future transfers. We conclude, however, that the importance of supporting the efforts of petitioners, MWD, and CVWD to resolve their disagreements pertaining to the transfer petition, without prejudice to other parties, outweighs the value of designating this order as precedent.[22]

### 7.2 Need to Reassess the Reasonableness of IID's Water Use Before 2024

Petitioners also request the SWRCB to find that the SWRCB's concerns, if any, with respect to IID's reasonable and beneficial water use are satisfied, and that the SWRCB does not anticipate the need to reassess the reasonable and beneficial use of water by IID before the year 2024, absent any substantial, material, adverse change in IID's irrigation practices or advances in economically feasible technology associated with irrigation efficiency. Petitioners request the SWRCB to find that the transfer and acquisitions are in furtherance of previous SWRCB decisions concerning the reasonableness of IID's water use, including Decision 1600 and Order WR 88-20. In support of its position that its water use is reasonable, IID presented evidence concerning its irrigation efficiency relative to other agricultural districts. (IID 2, pp. 4-11, ex. B.)

Article X, section 2 of the California Constitution and Water Code section 100 require "that the water resources of the State be put to beneficial use to the fullest extent of which they are capable,

[22] The designation of this order as non-precedential will not affect the enforceability of this order as against the parties to this proceeding during the term of the transfer; only the SWRCB's authority to rely on the order in other proceedings will be affected. (See Gov. Code, § 11425.60, subd. (a); 25 Cal. Law Revision Com. Rep. (1995) p. 55, reprinted in West's Ann. Gov. Code (1992 ed.) foll. § 11425.60, p. 151.)

and that the waste or unreasonable use or unreasonable method of use of water be prevented . . . ." (See also Wat. Code, § 275.) Through the requested finding, IID seeks assurance that the SWRCB will not reassess whether IID is meeting the constitutional mandate of reasonable use during the period when IID is ramping up to full implementation of the conservation and transfer project.

As explained in Decision 1600, the reasonableness doctrine embodied in article X, section 2 of the Constitution calls for consideration of all relevant facts, not just a single fact such as irrigation efficiency. (Decision 1600, pp. 22-24.) In Decision 1600, the SWRCB identified a number of facts relevant to the reasonableness of IID's water use. Those facts included the anticipated shortage in the amount of Colorado River water available to satisfy existing uses, the fact that IID's return flows were contributing to flooding problems at the Salton Sea, and the fact that practical conservation measures were available. (*Id*. at pp. 37-55, 58, 66.)

Currently, IID proposes to conserve 230,000 to 300,000 afa, a substantial amount of water, in accordance with a ramp-up schedule to which SDCWA, MWD, and CVWD have agreed. IID's irrigation efficiency should improve as a result of the implementation of conservation measures.[23] Provided that the QSA is executed, the principal users of Colorado River water will have resolved their competing claims to California's supply of Colorado River water.

As to the flooding issue, the record indicates that, even in the absence of the project, the elevation of the Sea will decrease, alleviating flooding problems. Witnesses' testimony indicated that the flooding problem might be resolved if the Sea were to drop three feet from its current elevation to -230 feet below sea level. (See R.T. pp. 1415, 3166.) Under baseline conditions, the elevation of the Sea is projected to reach –230 feet by 2010, and to drop another two feet by 2021. (IID 93, p. A3-24, fig. 3.3 -7.) If replacement water is provided to the Sea under the SSHCS, the elevation of the Sea will decline more slowly, but it will reach –230 by approximately 2012. (*Ibid*.)

[23] We recognize that IID's irrigation efficiency will not improve to the extent that IID chooses to fallow land in order to meet requirements to mitigate impacts to the Salton Sea. IID cannot be faulted for the failure to improve irrigation efficiency to the extent that mitigation requirements preclude such an improvement.

Provided that IID implements the transfer in accordance with the QSA and the flooding problem is resolved, we do not anticipate the need, absent a change in circumstances, to reassess the reasonableness of IID's water use before 2024. IID's conservation and transfer of 230,000 to 300,000 afa will be in furtherance of the SWRCB's directive to IID, contained in Decision 1600 and Order WR 88-20, to evaluate, secure funding for, and implement potential conservation measures. Because irrigation efficiency is not the only fact relevant to a determination of reasonableness, it would not be appropriate to find, as requested by IID, that the circumstances under which we anticipate it may be necessary to reassess IID's water use are limited to changes in IID's irrigation practices or technological advances in irrigation efficiency.

It bears emphasis that by making this finding we do not intend to bind the SWRCB in any future proceeding, particularly if circumstances change. To do so would be an abdication of the SWRCB's ongoing responsibility to prevent the unreasonable use of water. (See Wat. Code, § 275; see also *Tulare Dist. v. Lindsay-Strathmore Dist*. (1935) 3 Cal.2d 489, 567 [45 P.2d 972, 1007] ["What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time."].)

### 7.3 Applicability of Water Code Sections 1011, 1012, and 1013

Petitioners request the SWRCB to find that Water Code sections 1011, 1012, and 1013 apply to and govern the transfer and acquisitions, and that IID's water rights, including IID's priority of right, will be unaffected by the transfer and acquisitions. As explained in section 3, above, Water Code sections 1011 and 1012 protect IID's appropriative water rights from forfeiture to the extent that IID uses less water as a result of conservation efforts.

Regardless whether sections 1011, 1012, or 1013 apply in this case, IID's rights will be protected from forfeiture, diminution, or impairment to the extent that IID transfers water, provided that the transfer is implemented in accordance with applicable law. (Wat. Code, §§ 1745.07, 1014, 1017.) Moreover, effective January 1, 2003, SB 482 will amend Water Code section 1013 to protect IID's water rights from forfeiture to the extent that IID implements water efficiency conservation

measures or fallows land in order to carry out or mitigate for a transfer under the QSA. (Stats. 2002, ch. 617, § 7.)[24]

### 7.4 Reporting Requirements

Finally, petitioners request the SWRCB to make findings concerning IID's reporting obligations. Petitioners request that IID be allowed to verify the amount of conserved water transferred or acquired each year by (1) reporting that IID's diversions at Imperial Dam (less return flows) have been reduced below 3,100,000 acre-feet in an amount equal to the quantity of conserved water transferred or acquired, subject to variation permitted by the Inadvertent Overrun Program adopted by the Department of Interior, and (2) by reporting the amount of reductions in deliveries to participating farmers and the amount of water conserved by conservation projects implemented by IID itself. Petitioners request the SWRCB to determine that these annual reports satisfy the reporting requirements under Decision 1600 and Order WR 88-20. The only outstanding reporting requirement stems from Order WR 88-20, which required semi-annual reports on the conservation measures undertaken in satisfaction of Order WR 88-20.

The reporting requirement proposed by petitioners is adequate. IID may measure the amount of water transferred against the 3,100,000 acre-foot baseline because 3,100,000 acre-feet is less than the maximum amount of water that may be diverted under Permit 7643.[25] If adopted by the Secretary of Interior, the Inadvertent Overrun and Payback Policy would afford IID greater operational flexibility by allowing IID to payback inadvertent diversions in excess of IID's 3,100,000 acre-foot cap. (IID 53, pp. 2-4 - 2-8.)

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[24] Water Code section 1013 provides that if IID, acting under contract with the United States or pursuant to State or federal requirements, reduces through conservation measures inflows to the Salton Sea, IID shall not be liable for any resulting effects to the Salton Sea or its bordering area. The extent to which section 1013 protects IID from liability is not an issue in this case, and it would be inappropriate to offer an advisory opinion on this issue.

[25] The full face-value of a permit or license does not necessarily define the amount of water that may be transferred under the permit or license. As discussed above in section 3.7, to the extent that a given water right has been unexercised, the right is subject to forfeiture for non-use (except to the extent that the right holder has transferred water or has conserved water under Water Code section 1011). To the extent that a right has been forfeited, it cannot serve as the basis for a transfer. In this case, however, the possibility of forfeiture does not appear to be an issue because 3,100,000 acre-feet is substantially less than the 3,850,000 acre-foot, maximum face-value of Permit 7643, and well within the historic range of IID's water use. (See IID 11.)

The record indicates that the measuring device for IID's diversions at Imperial Dam has a significant margin of error relative to the volume of water diverted by IID. (See R.T. pp. 915-916.) IID will further verify, however, that it has reduced its diversions in an amount equal to the amount of water transferred by reporting the amount of reductions in deliveries to farmers and the amount of water saved by conservation projects implemented by IID.

IID may submit a single report that includes the information described above and includes information concerning conservation measures that IID has undertaken in satisfaction of Order WR 88-20. Although Order WR 88-20 required semi-annual reports, we find that an annual report will be adequate now that the conservation program required by WR 88-20 is substantially complete.

## 8.0 ENDANGERED SPECIES ACT REQUIREMENTS

As stated previously, IID has developed an HCP in support of its applications for incidental take permits under section 10(a)(1)(B) of the federal ESA and section 2081, subdivision (b) of the Fish and Game Code. Effective January 1, 2003, new Fish and Game Code section 2081.7 will authorize DFG to issue an incidental take permit to IID in connection with the transfer, under specified conditions. (Stats. 2002, ch. 617, § 2.) DFG will also be required to ensure that any permit issued to IID complies with existing provisions governing incidental take permits. (*Ibid*.) Compliance with CESA and the federal ESA may require implementation of mitigation measures different from or in addition to those measures identified in Fish and Game Code section 2081.7 and IID's HCP. Accordingly, as a condition of approval of the transfer petition we will require IID to obtain any necessary approvals under CESA and the federal ESA. In addition, we will require IID to comply with the fully protected species provisions of the Fish and Game Code to the extent applicable.

## 9.0 CONCLUSION

With the mitigation measures specified in this order, the proposed transfer is in the public interest, will not injure any legal user of water, and will not unreasonably affect fish, wildlife or other instream beneficial uses. Accordingly, the transfer is approved, subject to specified conditions.

As explained in section 4, above, no party submitted evidence to support an objection to the transfer based on injury to the right to use water for consumptive use purposes. CRIT was the only party

who submitted evidence in support of an objection based on injury to the right to use water for non-consumptive use purposes. Although CRIT submitted evidence in support of its assertion that the transfer would adversely affect CRIT's ability to generate hydroelectric power, CRIT failed to claim or present any evidence substantiating a claim that CRIT holds a water right that would provide a basis for requiring that flows be maintained in the Colorado River for use by CRIT's hydroelectric facilities. CRIT's use of water to generate hydroelectric power is not an interest entitled to protection under the "no injury" rule codified in Water Code section 1736.

As set forth more fully in section 5, the transfer as mitigated will not unreasonably affect fish and wildlife that rely on the drains in the IID service area. Impacts to fish, wildlife, and other instream beneficial uses of the Salton Sea will not be unreasonable, provided that IID implements the SSHCS for 15 years and replaces lost shoreline habitat. Impacts to cottonwood willow habitat and backwater habitat on the lower Colorado River will be reasonable, particularly if mitigated by the USBR as proposed. Impacts to fish and wildlife in the San Diego region resulting from any growth that may be induced by this project will not be different in kind or extent from impacts attributable to growth from other causes, and will not be unreasonable.

This order incorporates requirements that avoid or mitigate the adverse environmental impacts of the transfer to the extent feasible. To the extent that environmental impacts are not fully mitigated, and to the extent that fallowing may result in adverse socio-economic impacts, the public interest in the transfer outweighs those adverse impacts. The transfer is a critical part of California's efforts to reduce its use of Colorado River water in accordance with California's Colorado River Water Use Plan, the Interim Surplus Guidelines, and the draft QSA. Implementation of the transfer as approved by this order will benefit not just the parties to the transfer, but the State as a whole.

## 10.0 ORDER

IT IS HEREBY ORDERED:

Imperial Irrigation District's (permittee) and San Diego County Water Authority's (SDCWA) petition to transfer conserved water from permittee to SDCWA and to change the point of diversion, place of use, and purpose of use under Permit No. 7643 is approved. The term of this approval is a period of 75 years beginning on the effective date of this approval. This approval shall not become effective until the Quantification Settlement Agreement, as defined in Senate Bill 482 (Stats. 2002,

ch. 617, § 1), has been executed, and permittee has approved the transfer and issued a Notice of Determination under the California Environmental Quality Act. The right to transfer water in accordance with this order is subject to the permittee's compliance with the following conditions:

1. For the period of the transfer, Permit 7643 is amended to add the Whitsett Intake at Lake Havasu as a point of diversion. Whitsett Intake is located at N0319200, E3160300 by California Coordinates in Zone 5 and is within Section 28, Township 03 N, Range 27 E, SBB&M.

2. For the period of the transfer, Permit 7643 is amended to add municipal use as an authorized purposes of use.

3. For the period of the transfer, Permit 7643 is amended to add as authorized places of use the service areas of San Diego County Water Authority; Coachella Valley Water District, Improvement District No. 1; and Metropolitan Water District, as shown on maps to be submitted to the SWRCB.

   This approval is subject to the permittee first submitting to the Chief of the Division of Water Rights, an amended application map(s) with the Whitsett Intake point of diversion and the service areas of Coachella Valley Water District, Improvement District No. 1, Metropolitan Water District, and the San Diego County Water Authority.

4. The permittee shall submit an annual report to the Chief of the Division of Water Rights that verifies the amount of water transferred or acquired pursuant to this order by reporting:

   a. The quantity of water diverted at Imperial Dam;
   b. An estimate of the quantity of water that is returned to the Colorado River from diversions made at Imperial Dam;
   c. The quantity of water subject to variation permitted by the Inadvertent Overrun Program adopted by the Department of Interior;
   d. Gross diversions at Whitsett Intake plus the quantity of water diverted at Whitsett Intake pursuant to this order;
   e. An estimate of the reductions in deliveries to participating farmers;

f. An estimate of the quantity of water conserved by conservation projects implemented by the permittee; and

g. An estimate of the quantity of water conserved by efficiency-based conservation measures.

The quantities specified shall be reported for the period from January 1 to December 31 of each year of the transfer and shall be submitted by March 31 of the following calendar year. The permittee shall submit with its first report a description of the methods used to estimate those quantities of water that are not directly measured. Permittee may submit a single, annual report that includes the information described above and information concerning conservation measures that the permittee has undertaken in satisfaction of Order WR 88-20. This reporting requirement supersedes the requirement set forth in Order WR 88-20 that the permittee submit semi-annual reports of its conservation efforts in satisfaction of that order.

5. Permittee shall implement all provisions of the Salton Sea Habitat Conservation Strategy outlined in the Final Environmental Impact Report and Habitat Conservation Strategy (SCH # 1999091142), as certified by permittee on June 28, 2002, for a period of 15 years from the date of execution of the Quantification Settlement Agreement, as defined in Senate Bill 482 (Stats. 2002, ch. 617, § 1), with the following exceptions:

   A. At a minimum, permittee shall meet the mean modeled future baseline salinity trajectory; and

   B. Permittee shall continue to implement the Salton Sea Habitat Conservation Strategy for 15 years, even if the tilapia fishery collapses before the end of the 15-year term.

6. To demonstrate compliance with the Salton Sea Habitat Conservation Strategy, permittee shall submit a plan indicating how it intends to monitor salinity and elevation of the Salton Sea. The plan shall be submitted to the Chief of the Division of Water Rights within one year of the effective date of this approval. The plan shall identify proposed locations for monitoring salinity and elevation and shall specify proposed sampling and analytical methods. The plan must be approved by the Division Chief, who may modify the plan as

appropriate. If existing elevation measuring gages are not satisfactory to the Division Chief, measuring gages that are satisfactory to the Division Chief shall be installed.

The plan shall be implemented upon approval by the Division Chief. Elevation and salinity monitoring data shall be collected in a manner that allows comparison to the modeled future salinity and elevation conditions found in the Final Environmental Impact Report and Habitat Conservation Strategy (SCH # 1999091142), as certified by permittee on June 28, 2002. The data shall be collected from January 1 through December 31 of each year and shall be submitted to the Chief of the Division by March 31 of the subsequent year.

7. The SWRCB reserves continuing authority to consider whether it would be appropriate to add, delete, or modify the mitigation measures required by Conditions 5 and 6, above, in light of the results of the study on the feasibility of restoration to be prepared by the Secretary of Interior, in cooperation with the Resources Agency, the Salton Sea Authority, and the Governor of California, in accordance with the Salton Sea Reclamation Act of 1998 (Pub.L. No. 105-372 (Nov. 12, 1998) 112 Stat. 3377) and Senate Bill 482 (Stats. 2002, ch. 617, § 2). In the event that the incidental take authorization contained in section 2 of SB 482 is not effective, the SWRCB reserves continuing authority to consider whether it would be appropriate to add, delete or modify Conditions 5 and 6 in light of any subsequent legislation that addresses the measures necessary to allow the incidental take of fully protected, threatened, or endangered species that rely on the Salton Sea.

8. Permittee shall implement the monitoring and mitigation plan for air quality outlined in pages 3-50 through 3-52 of the Final Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002. Permittee shall implement step two of the plan within six months of the effective date of this approval. Permittee shall continue to implement the plan as long as project-related air quality impacts occur.

In addition, permittee shall implement the best management practices designed to mitigate for PM10 (particulate matter, less than 10 microns in size) emissions associated with land fallowing as described in Mitigation Measures AQ-3 and HCP2AQ-6 on pages 3.7-31 and

3.7-33 of the Draft Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142) and on page 3-54 of the Final Environmental Impact Report and Habitat Conservation Plan, as certified by permittee on June 28, 2002. Permittee shall also comply with any relevant requirements of the State Implementation Plan for PM10 Emissions (SIP) or PM10 rules of the Imperial County Air Pollution Control District (ICAPCD) or the South Coast Air Quality Management District (SCAQMD), as they may be amended.

Permittee shall submit an annual report to the SWRCB on actions taken during each calendar year to comply with this condition. The report for each calendar year shall be submitted to the Chief of the Division of Water Rights by March 31 of the subsequent year.

In each report, if the air quality impacts of the project are not being mitigated to less than significant levels, permittee shall identify any air quality mitigation measure that it determined was infeasible. Notwithstanding such a determination by permittee, if the Chief of the Division of Water Rights determines, after consultation with the ICAPCD, the SCAQMD and the California Air Resources Board, that the mitigation measure is feasible and necessary to mitigate the air quality impacts of the project, then permittee shall implement the mitigation measure.

9. Permittee shall submit an annual report to the SWRCB on the efforts of the United States Bureau of Reclamation (USBR) to implement the mitigation measures outlined in the United States Fish and Wildlife Service's Biological Opinion for the Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the lower Colorado River, Lake Mead to the Southerly International Boundary Arizona, California and Nevada (Jan. 12, 2001). The mitigation measures include the replacement of up to 744 acres of cottonwood – willow habitat, restoration of 44 acres of backwater habitat, and the re-introduction of some native fish species to the lower Colorado River. The report for each calendar year shall be submitted to the Chief of the Division of Water Rights by March 31 of the subsequent year.

The SWRCB reserves continuing authority to require the permittee to implement any of the mitigation measures described above that are not implemented by the USBR, provided that it is feasible for the permittee to implement the measures.

10. Permittee shall implement all the provisions of the Tamarisk Scrub Habitat Conservation Strategy, the Drain Habitat Conservation Strategy, the Desert Pupfish Conservation Strategy, and the Razorback Sucker Conservation Strategy, as described in the Final Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002.

    Permittee shall be responsible for compliance with all State and federal environmental laws and any permits necessary to carry out the mitigation measures described in the conservation strategies described above.

    Permittee shall submit an annual report to the SWRCB on actions taken during each calendar year to comply with this condition. The report for each calendar year shall be submitted to the Chief of the Division of Water Rights by March 31 of the subsequent year.

11. Permittee may petition the Chief of the Division of Water Rights to modify any of the mitigation measures required by this order if alternate mitigation measures are found to be equally protective, or more protective, of any species addressed in the Salton Sea Habitat Conservation Strategy, Tamarisk Scrub Habitat Conservation Strategy, Drain Habitat Conservation Strategy, Desert Pupfish Conservation Strategy, or Razorback Sucker Conservation Strategy, as described in the Final Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002.

12. Permittee, in consultation with the California Department of Fish and Game, the Regional Water Quality Control Board, Colorado River Basin Region (Regional Board), and the U.S. Environmental Protection Agency shall prepare a plan acceptable to the Chief of the Division of Water Rights to study the practices within IID that result in the concentration of selenium discharged to the Salton Sea and its tributaries, including agricultural drains used

by fish and wildlife. Upon the approval of the study plan by the Division Chief, permittee shall complete the study and prepare a report summarizing the results of the study and recommending any ways to reduce selenium discharges to levels that meet water quality objectives. The study plan shall be submitted to the Division Chief for approval at least 30 days prior to commencement of the study. The study as approved by the Division Chief and the report shall be completed prior to implementation of efficiency-based conservation measures that will save more than 25,000 afa. A copy of the study report shall be submitted to the Chief, Division of Water Rights and the Executive Officer of the Regional Board. Permittee shall work cooperatively with the Regional Board to implement any actions recommended by the report that are within the control of the permittee.

Permittee shall submit an annual report to the SWRCB on any actions taken pursuant to recommendations of the report during each calendar year. The report for each calendar year shall be submitted to the Chief of the Division of Water Rights by March 31 of the subsequent year.

13. To mitigate for the recreational and aesthetic impacts of a receding Salton Sea shoreline, permittee shall relocate or construct new recreational facilities as described in Mitigation Measures R-7 and R-10 on pages 3-6.19 through 3.6-21 in the Draft Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142) and on pages 4-7 through 4-10 in the Final Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002. Permittee also shall implement Mitigation A-1 as described on page 4-20 of the Final Environmental Impact Report and Habitat Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002.

Permittee shall submit an annual report to the SWRCB on actions taken during each calendar year to comply with this condition. The report for each calendar year shall be submitted to the Chief of the Division of Water Rights by March 31 of the subsequent year.

14. The SWRCB reserves continuing authority to consider whether any changes to this order may be appropriate in light of any new information that may become available if permittee revises, amends or supplements the Final Environmental Impact Report and Habitat

Conservation Plan (SCH # 1999091142), as certified by permittee on June 28, 2002, before permittee approves the project under CEQA, or any substantial changes that the permittee may make to the project as part of its approval decision.

15. The SWRCB reserves continuing authority to consider whether any changes to this order to minimize or mitigate for socio-economic impacts may be appropriate in light of the evaluation and recommendations of the report to be prepared by the Resources Agency and the Technology, Trade and Commerce Agency in accordance with SB 482. (Stats. 2002, ch. 617, § 9.)

16. This order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under California's fully protected species statutes, the California Endangered Species Act or the federal Endangered Species Act (ESA). Permittee shall obtain any necessary approvals under the Fish and Game Code and the federal ESA prior to carrying out the transfer. If a "take" of a species listed as fully protected, threatened or endangered under the Fish and Game Code or the federal ESA will result from the transfer, the permittee shall obtain an incidental take permit from the Department of Fish and Game or the U.S. Fish and Wildlife Service, as appropriate, prior to carrying out the transfer.

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17. No work shall commence and no water shall be diverted, stored or used under this order until a copy of a stream or lake alteration agreement between the Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the California Department of Fish and Game.

(0000063)

18. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this order.

(0000011)

**CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 28, 2002, and revised pursuant to Order WRO 2002-0016 adopted at a meeting of the State Water Resources Control Board held on December 20, 2002.

AYE: Arthur G. Baggett, Jr.
Richard Katz
Gary M. Carlton

NO: None

ABSENT: None

ABSTAIN: Peter S. Silva

*Original Signed By:*

Maureen Marché
Clerk to the Board

BILL ANALYSIS



SENATE THIRD READING
SB 277 (Ducheny)
As Amended September 5, 2003
Majority vote

SENATE VOTE : Vote not relevant

WATER, PARKS & WILDLIFE 20-0 APPROPRIATIONS 22-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Goldberg, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | Ayes: | Steinberg, Bates, Berg, Corbett, Mullin, Daucher, Diaz, Chu, Goldberg, Haynes, Leno, Maldonado, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Runner, Samuelian, Simitian, Wiggins, Yee |

SUMMARY : Provides for the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem. Specifically, this bill :

1)Deletes the contents of the bill as it was passed by the Senate.

2)States the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem.

3)Requires that the restoration of the Salton Sea be based on the preferred alternative developed as a result of the restoration study and alternative selection process required by Fish and Game Code Section 2081.7 (SB 317 (Kuehl)).

4)Requires that the preferred alternative provide the maximum feasible attainment of the following objectives:

a) Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea;
b) Elimination of air quality impacts from the restoration projects; and,



c) Protection of water quality.

5)Establishes the Salton Sea Restoration Fund (Fund) to be administered by the Director of the Department of Fish and Game (DFG).

6)Authorizes the use of money deposited in the Fund, upon appropriation by the Legislature, for the following purposes related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the Sea:

a) Environmental and engineering studies;
b) Implementation of conservation measures in the Salton Sea and the Lower Colorado River ecosystems, including the Colorado River Delta;
c) Implementation of the preferred Salton Sea restoration

alternative; and,
d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

7)Authorizes the Department of Water Resources to contract with water suppliers to purchase and sell water made available through voluntary reduction or elimination of water use to achieve the goals of the Act.

8)Requires the Department of Food and Agriculture (DFA), if funds are appropriated for that purpose, to review and report to the Governor and the Legislature by June 30, 2005 on all of the following:

a) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the QSA;
b) Measures taken by Imperial Irrigation District (IID) in formulating a fallowing program that minimizes economic impacts to the greatest extent;
c) Whether and to what extent funds provided to IID for transferred water under the Quantification Settlement Agreement (QSA), together with any other funds available for those purposes would mitigate those economic impacts and,
d) The amount of any additional funds required to mitigate the economic impacts.



9)Requires that the report include recommendations to the Governor and the Legislature on all of the following, if DFA finds that additional funds will be needed:

a) Proposed means for providing additional funds, including funding by the state; and,
b) Formulation of a program to administer those funds in the most effective manner, in consultation with the Department of Finance, the Resources Agency, the Employment Development Department, IID, and any other entities considered appropriate by the Secretary of Food and Agriculture.

10)States that this bill becomes operative only if SB 654 (Machado) and SB 317 (Kuehl) of the 2003-04 regular session are both chaptered and become effective by January 1, 2004.

EXISTING LAW authorizes DFG to issue permits for incidental take of fully protected, threatened, and endangered species in connection with the QSA and the Lower Colorado River Multi-Species Conservation Plan. This law was contingent on the signing of the QSA by December 31, 2002, and has lapsed.

FISCAL EFFECT : This Act will mainly be funded through fees on the transfer of water among the parties to the QSA. There may be a substantial cost to the state, depending on the results of the report to be prepared by DFA.

COMMENTS : This bill is one of three bills necessary to implement the QSA. The other bills are SB 317 (Kuehl) and SB 654 (Machado). The three bills are triple-jointed, so that none of the bills will become operative unless both the other bills do also by January 1, 2004.

The QSA is an agreement between IID, MWD, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado Rivers. It also provides California with a transition period to reduce California's draw from the Colorado River to its 4.4 million acre-foot entitlement. The QSA commits the state to restoration of the environmentally

sensitive Salton Sea and provides full mitigation for its water supply programs.

The Salton Sea is the largest inland body of water in



California. It is located in the Imperial and Coachella Valleys in Southern California. The surface elevation is 277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the lake is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million-acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25 percent saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Salton Sea is becoming increasingly salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Salton Sea will accelerate the salinization of the Salton Sea, as well as accelerate the evaporation of the water in the lake. The Salton Sea will become hyper-saline and be no longer able to support any fish or wildlife. Ultimately, the Salton Sea could dry up and return to its former condition as a desert.

IID, which provides water to the farmers in the Imperial Valley, has entered into a water transfer agreement with the SDCWA. As originally conceived, this agreement provided for the transfer of up to 200,000-acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement was modified to require the fallowing of agricultural land to provide water for the transfer. Fallowing of agricultural land may cause serious impacts on the Imperial Valley's economy.

In 1998, Congress passed the Salton Sea Restoration Act, Public Law 105-372, requiring federal agencies to offer alternative restoration options to Congress and the public in order to avoid further deterioration of the Salton Sea. To date, the federal agencies have failed to complete a satisfactory report on how to restore the Salton Sea.

One of the features of the final version of the QSA is a commitment on the part of the state to restore the Salton Sea.



Earlier versions merely committed to maintaining the present rate of deterioration of the Salton Sea for the next fifteen years.

This bill states that it is the responsibility of the State of California to restore the Salton Sea. The bill presumes that the state will work with the federal government to fund and implement the preferred alternative that will be identified by DFG.

The bill establishes the Fund, into which each of the parties to the QSA will deposit specified amounts. The Fund will also receive fees on water transfers among the parties to the QSA. The bill requires that money in the Fund must be appropriated by the Legislature before being used for the purposes of this Act.

Finally, the bill amends SB 482 (Kuehl), Chapter 617, Statutes of 2002 to require DFA, rather than the Resources Agency and the Technology, Trade and Commerce Agency to prepare a report on the economic impacts of the QSA on the Imperial Valley. Any economic impacts from the fallowing of farm land are expected to be mitigated by the funds paid to IID for transferred water. However, if the report identifies impacts that are not mitigated through water revenues, it must recommend measures by which the state can assist Imperial County in dealing with the impacts.

Analysis Prepared by : Jeffrey Volberg / W., P. & W. / (916) 319-2096

FN: 0003634

BILL ANALYSIS

SENATE RULES COMMITTEE | SB 277
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

UNFINISHED BUSINESS

Bill No: SB 277
Author: Ducheny (D), et al
Amended: 9/9/03
Vote: 21

SENATE NATURAL RES. & WILD. COMMITTEE : 9-0, 4/22/03
AYES: Kuehl, Oller, Alpert, Bowen, Denham, Hollingsworth, Ortiz, Sher, Torlakson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 37-0, 5/22/03 (Passed on Consent)
AYES: Aanestad, Ackerman, Alarcon, Alpert, Ashburn, Battin, Bowen, Brulte, Burton, Cedillo, Chesbro, Denham, Ducheny, Dunn, Figueroa, Florez, Hollingsworth, Johnson, Karnette, Knight, Kuehl, Machado, Margett, McClintock, McPherson, Morrow, Murray, Oller, Ortiz, Perata, Poochigian, Scott, Sher, Soto, Torlakson, Vasconcellos, Vincent

ASSEMBLY FLOOR : 79-0, 9/9/03 - See last page for vote

SUBJECT : Water: Salton Sea

SOURCE : Author

DIGEST : Assembly amendments delete the Senate version of the bill which authorized the Department of Fish and Game to approve a Natural Community Conservation Plan for the area in and around the Salton Sea as part of a proposed water transfer to San Diego if the plan is consistent with

CONTINUED



the long-term restoration of the Salton Sea.

This bill enacts the Salton Sea Restoration Act. The bill establishes the Salton Sea Restoration Fund to be administered by the Director of Fish and Game. Requires the fund to be expended, upon appropriation by the Legislature, for various purposes relating to the restoration of the Salton Sea.

The bill is one of three bills necessary to implement the Quantification Settlement Agreement (QSA). The other bills are SB 317 (Kuehl) and SB 654 (Machado). The three bills are contingent upon enactment of each of the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. The

bills are also contingent on execution of the QSA by October 12, 2003.

ANALYSIS : This bill:

1. Enacts the Salton Sea Restoration Act (Act).

2. States the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem.

3. Requires that the restoration of the Salton Sea be based on the preferred alternative developed as a result of the restoration study alternative selection process required by Fish and Game Code Section 2081.7 (SB 317 (Kuehl)).

4. Requires that the preferred alternative provide the maximum feasible attainment of the following objectives:

   A. Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea.

   B. Elimination of air quality impacts from the restoration projects.



   C. Protection of water quality.

5. Establishes the Salton Sea Restoration Fund (Fund) to be administered by the Director of the Department of Fish and Game (DFG).

6. Authorizes the use of money deposited in the Fund, upon appropriation by the Legislature, for the following purposes related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the Salton Sea:

   A. Environmental and engineering studies.

   B. Implementation of conservation measures in the Salton Sea and the Lower Colorado River ecosystems, including the Colorado River Delta.

   C. Implementation of the preferred Salton Sea restoration alternative.

   D. Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

7. Authorizes the Department of Water Resources to contract with water suppliers to purchase and sell water made available through voluntary reduction or elimination of water use to achieve the goals of the Act.

8. Requires the Department of Food and Agriculture (DFA), if funds are appropriated for the purpose, to review and report to the Governor and the Legislature by June 30, 2005 on all of the following:

   A. The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement (QSA).

   B. Measures taken by the Imperial Irrigation District

(IID) in formulating a fallowing program that minimizes economic impacts to the greatest extent.



C. Whether and to what extent funds provided to IID for transferred water under the QSA, together with any other funds available for those purposes, would mitigate those economic impacts.

D. The amount of any additional funds required to mitigate the economic impacts.

9. Requires that the report include recommendations to the Governor and the Legislature on all of the following, if DFA finds that additional funds will be needed:

A. Proposed means for providing additional funds, including funding by the state.

B. Formulation of a program to administer those funds in the most effective manner, in consultation with the Department of Finance, the Resources Agency, the Employment Development Department, IID, and any other entities considered appropriate by the Secretary of Food and Agriculture.

1. States that this bill becomes operative only if SB 654 (Machado) and SB 317 (Kuehl) of the 2003-04 regular session are both chaptered and become effective by January 1, 2004.

Comments

The QSA is an agreement between IID, the Metropolitan Water District of Southern California, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado River. It also provides California with a transition period to reduce California's draw from the Colorado River to its 4.4-million acre-foot entitlement. The QSA commits the state to restoration of the environmentally sensitive Salton Sea, and provides full mitigation for its water supply programs.

The Salton Sea is the largest inland body of water in California. It is located in the Imperial and Coachella Valleys in Southern California. The surface elevation is



277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the lake is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million-acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25 percent saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Salton Sea is becoming increasingly

salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Salton Sea will accelerate the salinization of the Salton Sea, as well as accelerate the evaporation of the water in the lake. The Salton Sea will become hyper-saline and be no longer able to support any fish or wildlife. Ultimately, the Salton Sea could dry up and return to its former condition as a desert.

IID, which provides water to the farmers in the Imperial Valley, has entered into a water transfer agreement with SDCWA. This transfer is one of the central features of the QSA and California's plan for reducing its water use to 4.4 million-acre feet per year. As originally conceived, the agreement provided for the transfer of up to 200,000-acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement was modified to require the fallowing of agricultural land to provide water for the transfer. Fallowing of agricultural land may cause serious impacts on the Imperial Valley's economy.

IID, which provides water to the farmers in the Imperial Valley, has entered into a water transfer agreement with the SDCWA. As originally conceived, this agreement provided for the transfer of up to 200,000-acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay



IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement was modified to require the fallowing of agricultural land to provide water for the transfer. Fallowing of agricultural land may cause serious impacts on the Imperial Valley's economy.

In 1998, Congress passed the Act, Public Law 105-372, requiring federal agencies to offer alternative restoration options to Congress and the public in order to avoid further deterioration of the Salton Sea. To date, the federal agencies have failed to complete a satisfactory report on how to restore the Salton Sea.

One of the features of the final version of the QSA is a commitment on the part of the state to restore the Salton Sea. Earlier versions merely committed to maintaining the present rate of deterioration of the Salton Sea for the next fifteen years.

This bill states that it is the responsibility of the State of California to restore the Salton Sea. The bill presumes that the state will work with the federal government to fund and implement the preferred alternative that will be identified by DFG.

The bill establishes the Fund. SB 317 (Kuehl) provides for a stream of revenue to the Fund. The details of that revenue stream are set forth in that bill. The various sources of revenues in SB 317 are estimated to provide up to $300 million to the Fund. SB 277 requires that money in the Fund must be appropriated by the Legislature before being used for the purposes of this Act.

Finally, the bill amends SB 482 (Kuehl), Chapter 617, Statutes of 2002 to require DFA, rather than the Resources

Agency and the Technology, Trade and Commerce Agency to prepare a report on the economic impacts of the QSA on the Imperial Valley. Any economic impacts from the fallowing of farmland are expected to be mitigated by the funds paid to IID for transferred water. However, if the report



identifies impacts that are not mitigated through water revenues, it must recommend measures by which the state can assist Imperial County in dealing with the impacts.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, Yee, Wesson

CP:nl 9/10/03 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS
1

SENATE COMMITTEE ON NATURAL RESOURCES AND WILDLIFE
Senator Sheila Kuehl, Chair
2003-2004 Regular Session

BILL NO: SB 277
AUTHOR: Ducheny
AMENDED: September 9, 2003
FISCAL: yes HEARING DATE:
URGENCY: no CONSULTANT: Bill Craven
SUBJECT: Salton Sea Restoration Fund

Note: By previous arrangement with the Senate Ag and Water Committee, it will analyze Section 2 of the bill dealing with the study of possible third-party impacts of the water transfer in the Imperial Valley. The analysis of the Natural Resources Committee will deal only with the findings and Section 1 of the bill dealing with the Salton Sea Restoration Fund.

Summary: Shall the Salton Sea Restoration Fund be created?

Existing Law: None.

Proposed Law: This bill commits the state to the eventual restoration of the Salton Sea upon the completion of the process described in SB 317 (Kuehl). The bill also establishes the Salton Sea Restoration Fund, and authorizes expenditures from the fund, which will be administered by the director of the Department of Fish and Game.

The bill directs that the selection of the preferred alternative for Salton Sea restoration shall provide the maximum feasible attainment of restoration of the shoreline habitat in order to protect the diversity of fish and wildlife that depend on the Salton Sea, elimination of air quality impacts from restoration projects, and protection of water quality.

The fund is authorized to pay for projects, subject to legislative appropriation, such as environmental and engineering studies related to Salton Sea restoration and the protection of fish and wildlife dependent on the sea. It can also implement conservation measures necessary to protect those species, including the adaptive management program established in SB 317. The fund can also be used to implement the Salton Sea restoration alternative, as well as costs associated with developing that alternative. The bill also authorizes the Department of Water Resources to contract for the purchase or sale of water that will implement the goals of this chapter.

Arguments in Support: None received.

Arguments in Opposition: None received.

Comments: As set forth in more detail in the analysis of SB 317 (Kuehl), this is one of three bills that are joined together that, as a package, are essential to establish the statutory framework that will enable the implementation of the QSA.

SUPPORT:
None received, although at the Assembly policy committee hearing on 9/5/03, this bill was supported by the four affected water agencies, the administration, the Association of California Water Agencies, Imperial County, and Audubon, Planning and Conservation League, and Defenders of Wildlife.

OPPOSITION:
None received

BILL ANALYSIS

SENATE AGRICULTURE & WATER RESOURCES COMMITTEE
Senator Michael J. Machado, Chair

BILL NO: SB 277 HEARING: 9/10/03
AUTHOR: Ducheny FISCAL: Yes
VERSION: 9/9/03 CONSULTANT: Dennis O'Connor

Water: Salton Sea.

BACKGROUND AND EXISTING LAW

This bill is one of three bills necessary to implement the QSA. The other bills are SB 317 (Kuehl) and SB 654 (Machado). The three bills are contingent upon enactment of each of the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. The bills are also contingent on execution of the QSA by October 12, 2003.

By agreement with the Senate Committee on Natural Resources, this analysis will address Section 2 of this bill. The Natural Resources Committee will analyze Section 1.

Background

The 1928 Boulder Canyon Project Act, among other things, apportioned the lower basin's 7.5 million acre-feet (maf) of water from the Colorado River among the states of Arizona (2.8 maf), California (4.4 maf) and Nevada (0.3 maf).

For many years, California has been using significantly more water than the 4.4 maf allotment. Some years California's water use reached 5.2 maf. Before 1996, this was not a serious problem. Since the other lower basin states were not fully using all of their Colorado River water, the Secretary of Interior allowed California to make use of those unused apportionments. However, as the other lower basin states began using more and more of their apportionments, it became apparent that California was going to have to develop a strategy to live within its 4.4 maf allotment.

In 1996, then Secretary of Interior Bruce Babbitt made it clear that California could not continue to use more than its 4.4 maf allotment, and required California to reduce its Colorado River use. However, developing and implementing such a plan proved difficult. Progress was made in fits and starts towards resolving many of the early issues:

San Diego County Water Authority (SDCWA) and IID reached



initial terms for a conservation based water transfer.
San Diego and MWD reached a preliminary agreement on how to move the water from IID to San Diego.
IID, CVWD, and MWD agreed on key terms for a quantification settlement agreement. Two important aspects of the key terms were:
1. Resolving long-standing conflicts between CVWD and IID over their relative rights to Colorado River water, and
2. CVWA and MWD agreed to put aside for 75 years a long-standing dispute over beneficial use by IID.

However, as old issues moved towards resolution, new issues emerged. Two particularly challenging issues were:

Salton Sea - a conservation based transfer would reduce agricultural drainage into the sea, thereby hastening the day the sea would become hypersaline and no longer capable of supporting an active fishery.
Economic Impacts - shifting from a conservation based transfer

to a fallowing based transfer potentially could effect the local economy negatively.

To help provide a soft landing to California as it moved from 5.2 maf to 4.4 maf, the Secretary of Interior agreed to implement Interim Surplus Guidelines for 15 years. These guidelines provide for delivery of surplus water from the Colorado River to California, Nevada, and Arizona. The Secretary conditioned implementing the Interim Surplus Guidelines to signing a final QSA by December 31, 2002. MWD, CVWD, and IID were to be the three key parties to the QSA.

On December 31, 2002, the clock ran out for California. Time expired, and instead of allowing California to ramp down its use of Colorado River water over 15 years, Secretary of Interior Gale Norton ordered an immediate reduction of water to the agencies.

The fall out was severe. Among other things, IID sued the Secretary, challenging her right to reduce their contract deliveries in a way IID alleged was outside of her authority.

Amidst all this, Governor Davis convened months of closed-door meetings with a state negotiating team and representatives from four Southern California water agencies to reach an agreement. After much work, the result is the proposed QSA.

The QSA is an agreement between IID, the Metropolitan Water



District of Southern California, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado River. It also provides California a transition period to implement water transfers and supply programs that will reduce California's overdependence upon the Colorado River and reduce the state's draw to its 4.4 maf basic annual apportionment. The QSA commits the state to a restoration path for the environmentally sensitive Salton Sea as well as provides full mitigation for these water supply programs.

Major features of the QSA include:

- Initial term of 45 years and a renewal term of 30 years by mutual consent;
- Quantification of IID's Colorado River entitlement at 3.1 million acre-feet;
- Quantification of CVWD's Colorado River entitlement at 330,000 acre-feet;
- The state commits to a restoration path for Salton Sea by providing $20 million this year to fund the development of a restoration plan by 2006;
- An innovative restoration funding program for the Salton Sea would be implemented, under which the state of California would purchase up to 1.6 million acre-feet of water from IID for sale to MWD. This financing plan is estimated to generate up to $300 million for the restoration program.
- A peace treaty between the four water agencies and the promise for lasting peace among the seven states that share the Colorado River; and
- Water transfers:
  - IID-MWD transfer of up to 110,000 acre-feet per year from IID to MWD;
  - IID-SDCWA transfer, ramping up to 200,000 acre-feet per year from IID to the SDCWA;
  - IID-CVWD transfers ramping up to 103,000 acre-feet per year from IID to CVWD;
  - Potential water transfers between 25,000 and 111,000 acre-feet annually from the Palo Verde Irrigation District to MWD;
  - Lining of the All-American and Coachella canals, with the 78,000 acre-feet of water produced annually going to either MWD or SDCWA; and
  - 16,000 acre-feet per year of additional canal-lining

water provided to the San Luis Rey Settlement Parties to implement a 1988 federal law that resolved decades-old



litigation over Indian water rights.

Current Law

Last year, the Legislature passed and the Governor signed SB 482 (Kuehl) (Ch. 617, Stat. 2002). Among other things, that bill requires the Resources Agency and the Technology, Trade, and Commerce Agency to review and report on the economic impact of land following instituted as a part of the water transfers required under the QSA.

The report is to be developed in consultation with the Imperial Irrigation District, Imperial County, and anyone else the secretaries of those two agencies deem appropriate. Among other things, the report is to estimate the amount of any additional funds required to mitigate the economic impacts.

If the report indicates that additional funds are required, the report is to recommend the means for providing those funds and to formulate a program to administer those funds. The program is to be developed in consultation with the Departments of Finance, Food and Agriculture, and Water Resources, with the Imperial Irrigation District, and with any other entities deemed appropriate by the secretaries of the two agencies.

PROPOSED LAW

Section 2 of this bill does three main things:

1. Changes the agencies responsible for making the report from the Resources Agency and the Technology, Trade, and Commerce Agency to the Department of Food and Agriculture.

2. Makes the report contingent upon appropriation of funds.

3. Changes the agencies that need to be consulted in developing a mitigation program to the Department of Finance, the Resources Agency, the Employment Development Department, IID, Imperial Valley area governments, and anyone else the Secretary of Food and Agriculture deems appropriate.

COMMENTS

1. Reflects De-Funding of Trade and Commerce. The Budget Act of 2003-2004 defunded the Trade and Commerce Agency. Consequently, the Trade and Commerce Agency could no longer be responsible for issuing the report.



2. Critical to QSA. Concern about the potential economic consequences of using fallowing to produce water for transfers has been a major issue in the Imperial Valley. Agreement to conduct this report was a critical element to moving the QSA forward last fall. Failure to make the changes reflected in this bill could jeopardize ratification of the QSA by IID.

3. Will Everything Come Together This Time? The history of the QSA has been that periodically, the affected parties announce that they had reached agreement on terms, the Legislature takes action to make the necessary changes in law, and then for one reason or another the agreement falls apart at the last minute. While by all appearances, the outcome will be different this time, there are no guarantees. Consequently, the three QSA bills are contingent upon enactment of each of

the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. More important, the principle benefits to the QSA parties of these three bills are contingent on execution of the QSA by October 12, 2003. October 12, 2003 is also the constitutional deadline for the Governor to sign or veto bills passed this year.

PRIOR RELEVANT ACTIONS

Assembly Water, Parks, and Wildlife19-0
Assembly Floor 79-0

SUPPORT

Audubon Society - California
Coachella Valley Water District
Defenders of Wildlife
Imperial Irrigation District
Metropolitan Water District of Southern California
Planning and Conservation League
San Diego County Water Authority

OPPOSITION

None received

BILL ANALYSIS



(Without Reference to File)

SENATE THIRD READING
SB 277 (Ducheny)
As Amended September 9, 2003
Majority vote

SENATE VOTE : Not relevant

WATER, PARKS & WILDLIFE 19-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | | |

SUMMARY : Provides for the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem. Specifically, this bill :

1)Deletes the contents of this bill as it was passed by the Senate.

2)Enacts the Salton Sea Restoration Act (Act).

3)States the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem.

4)Requires that the restoration of the Salton Sea be based on the preferred alternative developed as a result of the restoration study and alternative selection process required by Fish and Game Code Section 2081.7 (SB 317 (Kuehl)).

5)Requires that the preferred alternative provide the maximum feasible attainment of the following objectives:

a) Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and



wildlife that depend on the Salton Sea;
b) Elimination of air quality impacts from the restoration projects; and,
c) Protection of water quality.

6)Establishes the Salton Sea Restoration Fund (Fund) to be administered by the Director of the Department of Fish and Game (DFG).

7)Authorizes the use of money deposited in the Fund, upon appropriation by the Legislature, for the following purposes related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the Salton Sea:

a) Environmental and engineering studies;
b) Implementation of conservation measures in the Salton

Sea and the Lower Colorado River ecosystems, including the Colorado River Delta;
c) Implementation of the preferred Salton Sea restoration alternative; and,
d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

8)Authorizes the Department of Water Resources to contract with water suppliers to purchase and sell water made available through voluntary reduction or elimination of water use to achieve the goals of the Act.

9)Requires the Department of Food and Agriculture (DFA), if funds are appropriated for that purpose, to review and report to the Governor and the Legislature by June 30, 2005 on all of the following:

a) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement (QSA);
b) Measures taken by Imperial Irrigation District (IID) in formulating a fallowing program that minimizes economic impacts to the greatest extent;
c) Whether and to what extent funds provided to IID for transferred water under the QSA, together with any other funds available for those purposes would mitigate those economic impacts; and,



d) The amount of any additional funds required to mitigate the economic impacts.

10)Requires that the report include recommendations to the Governor and the Legislature on all of the following, if DFA finds that additional funds will be needed:

a) Proposed means for providing additional funds, including funding by the state; and,
b) Formulation of a program to administer those funds in the most effective manner, in consultation with the Department of Finance, the Resources Agency, the Employment Development Department, IID, Imperial Valley Area Governments, and any other entities considered appropriate by the Secretary of Food and Agriculture.

11)States that this bill becomes operative only if SB 654 (Machado) and SB 317 (Kuehl) of the 2003-04 regular session are both chaptered and become effective by January 1, 2004.

EXISTING LAW authorizes DFG to issue permits for incidental take of fully protected, threatened, and endangered species in connection with the QSA and the Lower Colorado River Multi-Species Conservation Plan. This law was contingent on the signing of the QSA by December 31, 2002, and has lapsed.

FISCAL EFFECT : This Act will mainly be funded through fees on the transfer of water among the parties to the QSA. There may be a substantial cost to the state, depending on the results of the report to be prepared by DFA.

COMMENTS : This bill is one of three bills necessary to implement the QSA. The other bills are SB 317 (Kuehl) and SB 654 (Machado). The three bills are each contingent on enactment of each of the others. None of the bills will become operative unless both the other bills become operative by January 1, 2004.

The QSA is an agreement between IID, MWD, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado Rivers. It also provides California

with a transition period to reduce California's draw from the Colorado River to its 4.4-million acre-foot entitlement. The QSA commits the state to restoration of the environmentally sensitive Salton Sea and provides full mitigation for its water



supply programs.

The Salton Sea is the largest inland body of water in California. It is located in the Imperial and Coachella Valleys in Southern California. The surface elevation is 277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the lake is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million-acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25 percent saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Salton Sea is becoming increasingly salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Salton Sea will accelerate the salinization of the Salton Sea, as well as accelerate the evaporation of the water in the lake. The Salton Sea will become hyper-saline and be no longer able to support any fish or wildlife. Ultimately, the Salton Sea could dry up and return to its former condition as a desert.

IID, which provides water to the farmers in the Imperial Valley, has entered into a water transfer agreement with the SDCWA. As originally conceived, this agreement provided for the transfer of up to 200,000-acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement was modified to require the fallowing of agricultural land to provide water for the transfer. Fallowing of agricultural land may cause serious impacts on the Imperial Valley's economy.

In 1998, Congress passed the Act, Public Law 105-372, requiring federal agencies to offer alternative restoration options to Congress and the public in order to avoid further deterioration of the Salton Sea. To date, the federal agencies have failed to complete a satisfactory report on how to restore the Salton Sea.



One of the features of the final version of the QSA is a commitment on the part of the state to restore the Salton Sea. Earlier versions merely committed to maintaining the present rate of deterioration of the Salton Sea for the next fifteen years.

This bill states that it is the responsibility of the State of California to restore the Salton Sea. The bill presumes that the state will work with the federal government to fund and implement the preferred alternative that will be identified by

DFG.

The bill establishes the Fund, into which each of the parties to the QSA will deposit specified amounts. The Fund will also receive fees on water transfers among the parties to the QSA. The bill requires that money in the Fund must be appropriated by the Legislature before being used for the purposes of this Act.

Finally, the bill amends SB 482 (Kuehl), Chapter 617, Statutes of 2002 to require DFA, rather than the Resources Agency and the Technology, Trade and Commerce Agency to prepare a report on the economic impacts of the QSA on the Imperial Valley. Any economic impacts from the fallowing of farmland are expected to be mitigated by the funds paid to IID for transferred water. However, if the report identifies impacts that are not mitigated through water revenues, it must recommend measures by which the state can assist Imperial County in dealing with the impacts.

Analysis Prepared by : Jeffrey Volberg / W., P. & W. / (916) 319-2096

FN: 0003967

BILL ANALYSIS



Date of Hearing: September 5, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 277 (Ducheny) - As Amended: September 5, 2003

SENATE VOTE : Not relevant.

SUBJECT : The Salton Sea Restoration Act (Act).

SUMMARY : Provides for the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem. Specifically, this bill :

1)Deletes the contents of the bill as it was passed by the Senate.

2)States the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem.

3)Requires that the restoration of the Salton Sea be based on the preferred alternative developed as a result of the restoration study and alternative selection process required by Fish and Game Code Section 2081.7 (SB 317 (Kuehl)).

4)Requires that the preferred alternative provide the maximum feasible attainment of the following objectives:

a) Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea;
b) Elimination of air quality impacts from the restoration projects; and,
c) Protection of water quality.

5)Establishes the Salton Sea Restoration Fund (Fund) to be administered by the Director of the Department of Fish and Game (DFG).

6)Authorizes the use of money deposited in the Fund, upon appropriation by the Legislature, for the following purposes related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the Salton Sea:



a) Environmental and engineering studies;
b) Implementation of conservation measures in the Salton Sea and the Lower Colorado River ecosystems, including the Colorado River Delta;
c) Implementation of the preferred Salton Sea restoration alternative; and,
d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

7)Authorizes the Department of Water Resources to contract with water suppliers to purchase and sell water made available through voluntary reduction or elimination of water use to achieve the goals of the Act.

8)Requires the Department of Food and Agriculture (DFA), if

funds are appropriated for the purpose, to review and report to the Governor and the Legislature by June 30, 2005 on all of the following:

a) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement (QSA);
b) Measures taken by the Imperial Irrigation District (IID) in formulating a fallowing program that minimizes economic impacts to the greatest extent;
c) Whether and to what extent funds provided to IID for transferred water under the QSA, together with any other funds available for those purposes, would mitigate those economic impacts; and,
d) The amount of any additional funds required to mitigate the economic impacts.

9) Requires that the report include recommendations to the Governor and the Legislature on all of the following, if DFA finds that additional funds will be needed:

a) Proposed means for providing additional funds, including funding by the state; and,
b) Formulation of a program to administer those funds in the most effective manner, in consultation with the Department of Finance, the Resources Agency, the Employment Development Department, IID, and any other entities considered appropriate by the Secretary of Food and



Agriculture.

10) States that this bill becomes operative only if SB 654 (Machado) and SB 317 (Kuehl) of the 2003-04 regular session are both chaptered and become effective by January 1, 2004.

EXISTING LAW authorizes DFG to issue permits for incidental take of fully protected, threatened, and endangered species in connection with the QSA. This law was contingent on the signing of the QSA by December 31, 2002, and has lapsed.

FISCAL EFFECT : This Act will mainly be funded through fees on the transfer of water among the parties to the QSA. There may be a substantial cost to the state, depending on the results of the report to be prepared by DFA.

COMMENTS : This bill is one of three bills necessary to implement the QSA. The other bills are SB 317 (Kuehl) and SB 654 (Machado). The three bills are contingent upon enactment of each of the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. The bills are also contingent on execution of the QSA by October 12, 2003.

The QSA is an agreement between IID, the Metropolitan Water District of Southern California, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado River. It also provides California with a transition period to reduce California's draw from the Colorado River to its 4.4-million acre-foot entitlement.

The QSA will provide up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will quantify IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. Over the 75-year life of the QSA the transfers of water from primarily agricultural uses to primarily urban uses will provide more than 30 million-acre feet.

The QSA commits the state to restoration of the environmentally sensitive Salton Sea and provides full mitigation for its water supply programs. The Salton Sea is the largest inland body of water in California. It is located in the Imperial and



Coachella Valleys in Southern California. The surface elevation is 277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the lake is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million-acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25 percent saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Salton Sea is becoming increasingly salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Salton Sea will accelerate the salinization of the Salton Sea, as well as accelerate the evaporation of the water in the lake. The Salton Sea will become hyper-saline and be no longer able to support any fish or wildlife. Ultimately, the Salton Sea could dry up and return to its former condition as a desert.

IID, which provides water to the farmers in the Imperial Valley, has entered into a water transfer agreement with SDCWA. This transfer is one of the central features of the QSA and California's plan for reducing its water use to 4.4 million-acre feet per year. As originally conceived, the agreement provided for the transfer of up to 200,000-acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement was modified to require the fallowing of agricultural land to provide water for the transfer. Fallowing of agricultural land may cause serious impacts on the Imperial Valley's economy.

In 1998, Congress passed the Act, Public Law 105-372, requiring federal agencies to offer alternative restoration options to Congress and the public in order to avoid further deterioration of the Salton Sea. To date, the federal agencies have failed to complete a satisfactory report on how to restore the Salton Sea.

This bill states that it is the responsibility of the State of California to restore the Salton Sea. The bill presumes that



the state will work with the federal government to fund and implement the preferred alternative that will be identified by DFG.

The bill establishes the Fund. SB 317 (Kuehl) provides for a stream of revenue to the Fund. The details of that revenue stream are set forth in that bill. The various sources of revenues in
SB 317 are estimated to provide up to $300 million to the Fund. SB 277 requires that money in the Fund must be appropriated by

the Legislature before being used for the purposes of this Act.

Finally, the bill amends SB 482 (Kuehl), Chapter 617, Statutes of 2002 to require DFA, rather than the Resources Agency and the Technology, Trade and Commerce Agency to prepare a report on the economic impacts of the QSA on the Imperial Valley. Any economic impacts from the fallowing of farmland are expected to be mitigated by the funds paid to IID for transferred water. However, if the report identifies impacts that are not mitigated through water revenues, it must recommend measures by which the state can assist Imperial County in dealing with the impacts.

REGISTERED SUPPORT / OPPOSITION :

Support

Coachella Valley Water District
Metropolitan Water District of Southern California

Opposition

None on file.

Analysis Prepared by : Jeffrey Volberg / W., P. & W. / (916) 319-2096

BILL ANALYSIS



SENATE THIRD READING
SB 277 (Ducheny)
As Amended April 29, 2003
Majority vote

SENATE VOTE :37-0

WATER, PARKS & WILDLIFE 20-0 APPROPRIATIONS 22-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Goldberg, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | Ayes: | Steinberg, Bates, Berg, Corbett, Mullin, Daucher, Diaz, Chu, Goldberg, Haynes, Leno, Maldonado, Nation, Negrete McLeod, Nunez, Pavley, Ridley-Thomas, Runner, Samuelian, Simitian, Wiggins, Yee |

SUMMARY: Authorizes the Department of Fish and Game (DFG) to approve a Natural Communities Conservation Plan (NCCP) for the Salton Sea area as part of the proposed water transfer between the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA), if the plan is consistent with the long-term restoration of the Salton Sea. Specifically, this bill:

1)Makes findings and declarations that:

   a) The Salton Sea is a valuable asset to the state and the nation;
   b) Protection of the Salton Sea is the responsibility of the state and the nation;
   c) Restoration of the Salton Sea will help ensure that California can live within its entitlement to use 4.4 million acre feet of water from the Colorado River; and,
   d) It is important that the state:

      i) Promote a comprehensive plan that protects and improves the long-term viability of the Salton Sea;
      ii) Increase public awareness and support for protecting the long-term health of the Salton Sea;
      iii) Promote the Salton Sea as an integral part of the



      Pacific Flyway, Colorado River, Colorado River Delta, and historic Lake Cahuilla; and,
      iv) Coordinate and collaborate with organizations working to protect and restore other ecosystems connected with the Salton Sea.

2)Authorizes DFG to approve an NCCP that is proposed as a condition of, or that is related to, a water transfer between IID and SDCWA, if DFG determines that the plan is consistent with the long-term restoration of the Salton Sea.

EXISTING LAW authorizes DFG to enter into agreements with persons or public entities for the purpose of preparing an NCCP, and approve the NCCP for implementation if certain requirements are met.

FISCAL EFFECT : Some cost to DFG of participating in the NCCP process.

COMMENTS : An NCCP is a plan that provides for the conservation of habitat of an endangered, threatened, or candidate species, or multiple species. In return for preparation of an NCCP, DFG is authorized to issue incidental take permits for the species covered by the plan under the California Endangered Species Act (CESA). There are a number of requirements for the process of developing an NCCP, as well as requirements for the information and scientific data used to develop an NCCP.

The Sea is the largest inland body of water in California. It is located in the Imperial and Coachella Valleys in Southern California. The surface elevation is 277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the Salton Sea is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25% saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Salton Sea is becoming increasingly salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Salton Sea will accelerate the



salinization of the Salton Sea, as well as accelerate the evaporation of the water in the Salton Sea. Ultimately, the Salton Sea could dry up and return to its former condition as a desert.

IID, which provides water to the farmers in the Imperial Valley, and SDCWA have entered into a water transfer agreement. As originally conceived, this agreement provided for the transfer of up to 200,000 acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement has been modified to require the fallowing of agricultural land to provide water for the transfer.

The transfer is also contingent on a wider settlement agreement entitled the Quantification Settlement Agreement (QSA) that involves other agencies that have claims against water from the Colorado River. The QSA has not been completed yet.

In order to complete the water transfer, IID and SDCWA are required to obtain certain environmental permits, including incidental take permits under CESA. This bill authorizes DFG to enter into an NCCP with IID and SDCWA, as long as the NCCP is consistent with the long-term restoration of the Salton Sea.

Current law, mainly the NCCP Act of 2002, authorizes DFG to enter into an NCCP with any person or entity that requests it. However, this bill places an additional requirement on the NCCP needed for the IID/SDCWA transfer. Restoration of the Salton Sea will require some means of slowing the rate of accumulation of salt in the Sea, or increasing the flow of fresh water into the Sea. Many projects have been proposed for restoring the Sea in the past thirty years, although none has yet been judged feasible. Whatever means is used to restore the Salton Sea, it will be very expensive. This bill identifies restoration of the Salton Sea as a responsibility of the state and federal governments.

Linking approval of an NCCP to long-term restoration of the Salton Sea presents a considerable obstacle to the water transfer. It is unlikely, though, that DFG would approve the necessary permits without at least a plan to prevent any



increased deterioration of the Sea, if not restoration.

In the event that the QSA is not completed and adopted by all the parties involved, this bill would have no effect. Negotiations on the QSA are continuing.

Analysis Prepared by : Jeffrey Volberg / W., P. & W. / (916) 319-2096

FN: 0002453

BILL ANALYSIS



Date of Hearing: July 16, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 277 (Ducheny) - As Amended: April 29, 2003

Policy Committee: Water, Parks & Wildlife Vote: 20-0 (Consent)

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY

This bill allows the Department of Fish and Game (DFG) to approve a natural community conservation plan (NCCP) proposed as a condition of, or that is related to, a water transfer between the Imperial Irrigation District (IID) and the San Diego County Water Authority, if the department determines the NCCP is consistent with the long-term restoration of the Salton Sea.

FISCAL EFFECT

Minor costs, probably less than $50,000 one-time, perhaps in FY 2004-05, to the DFG to review the NCCP and to determine whether or not to approve the plan. (GF or bond funds.)

COMMENTS

1)Rationale . The author believes that the proposed water transfer from the IID to San Diego is likely to require, among other things, the development of an NCCP to evaluate the transfer's impact on wildlife habitat and other ecological elements within the Imperial Valley and the Salton Sea basin. This bill explicitly authorizes the DFG to approve such an NCCP, as long as the department determines the plan is consistent with Salton Sea restoration efforts designed to control salinity and water level. As salinity levels rise, the ability of several species, especially migrating birds, to use the Salton Sea and its wetlands as habitat becomes increasingly restricted.

2)Prior Legislation . SB 482 (Kuehl) - Chapter 617, Statutes of 2002 required the Secretary of Resources to, among other



things, enter into an MOU with the federal Secretary of the Interior, the Salton Sea Authority, and the governor to develop, select, and implement alternatives for projects that lead to the restoration of the Salton Sea. The MOU will establish, when finalized, criteria to evaluate and select alternatives, criteria to determine the magnitude and practicability of costs of construction, operation, and maintenance of each alternative, and a requirement to report on the potential alternatives, the selection of a preferred alternative along with a proposed funding plan, and the issuance of a final alternatives report to Congress and the Legislature.

3)Other Legislation . SB 623 (Ducheny), also before this committee today, accelerates, by two years to January 1, 2005, the deadline for the Resources Agency to report to Congress

and the Legislature on potential alternative projects for Salton Sea restoration. SB 317 (Kuehl), pending in the Assembly Water, Parks & Wildlife Committee, activates some of the provisions contained in SB 482 that did not take effect because the water transfer was not approved before the end of 2002.

4)The Salton Sea was accidentally created when a combination of flooding on the Colorado River and the collapse of a series of diversion dikes along the river resulted in a substantial portion of the Colorado River flow being diverted to the Salton Basin for 18 months during 1905-07. While the initial fresh water volume has long since evaporated, the lake is replenished primarily by agricultural drainage from the Imperial Valley and, as such, is officially classified by the U.S. Bureau of Reclamation as a drainage reservoir. While the Salton Sea continues to become increasingly saline (its waters are now 26% more saline than the Pacific Ocean), the prospect of substantial volumes of Colorado River water being diverted from the IID to San Diego could accelerate the salination of the Salton Sea and render it considerably less attractive as a wildlife habitat for migrating birds and other species. These species include pelicans, cormorants, various waterfowl, grebes, and corvina.



Analysis Prepared by : Steve Archibald / APPR. / (916) 319-2081

BILL ANALYSIS



Date of Hearing: July 8, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 277 (Ducheny) - As Amended: April 29, 2003

SENATE VOTE : 37-0

SUBJECT : Natural Community Conservation Plan: Salton Sea.

SUMMARY : Authorizes the Department of Fish and Game (DFG) to approve a Natural Communities Conservation Plan (NCCP) for the Salton Sea area as part of the proposed water transfer between the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA), if the plan is consistent with the long-term restoration of the Salton Sea. Specifically, this bill :

1)Makes findings and declarations that:

a) The Salton Sea is a valuable asset to the state and the nation.
b) Protection of the Salton Sea is the responsibility of the state and the nation.
c) Restoration of the Salton Sea will help ensure that California can live within its entitlement to use 4.4 million acre feet of water from the Colorado River.
d) It is important that the state:

i) Promote a comprehensive plan that protects and improves the long-term viability of the Salton Sea.
ii) Increase public awareness and support for protecting the long-term health of the Salton Sea.
iii) Promote the Salton Sea as an integral part of the Pacific Flyway, Colorado River, Colorado River Delta, and historic Lake Cahuilla.
iv) Coordinate and collaborate with organizations working to protect and restore other ecosystems connected with the Salton Sea.

2)Authorizes DFG to approve an NCCP that is proposed as a condition of, or that is related to, a water transfer between IID and SDCWA, if DFG determines that the plan is consistent with the long-term restoration of the Salton Sea.



EXISTING LAW authorizes DFG to enter into agreements with persons or public entities for the purpose of preparing an NCCP, and approve the NCCP for implementation if certain requirements are met.

FISCAL EFFECT : Some cost to DFG of participating in the NCCP process.

COMMENTS : An NCCP is a plan that provides for the conservation of habitat of an endangered, threatened, or candidate species, or multiple species. In return for preparation of an NCCP, DFG is authorized to issue incidental take permits for the species covered by the plan under the California Endangered Species Act (CESA). There are a number of requirements for the process of developing an NCCP, as well as requirements for the information and scientific data used to develop an NCCP.

The Salton Sea is the largest inland body of water in California. It is located in the Imperial and Coachella Valleys in Southern California. The surface elevation is 277 feet below sea level.

Created in 1907 by a breach in a canal bringing water to the Imperial Valley from the Colorado River, the lake is sustained by inflows from the New and Alamo Rivers and by agricultural runoff. Seventy five percent of the 1.35 million acre feet of water that flows into the Salton Sea every year is agricultural drainage. Although the lake is 25 percent saltier than the ocean, it sustains a productive fishery and provides habitat for more than 380 species of birds.

As time goes on, the Sea is becoming increasingly salty. The saltiness may be a factor in the large die-offs of birds and fish that occur every summer. Any decrease in the amount of water flowing into the Sea will accelerate the salinization of the Sea, as well as accelerate the evaporation of the water in the lake. Ultimately, the Sea could dry up and return to its former condition as a desert.

The IID, which provides water to the farmers in the Imperial Valley, and the SDCWA have entered into a water transfer agreement. As originally conceived, this agreement provided for the transfer of up to 200,000 acre feet per year of IID water to SDCWA. In exchange, SDCWA would pay IID enough for its farmers to make on-farm conservation improvements that would provide



enough conserved water to make up the transfer amount. However, because on-farm conservation would reduce inflows into the Salton Sea, the agreement has been modified to require the fallowing of agricultural land to provide water for the transfer.

The transfer is also contingent on a wider settlement agreement entitled the Quantification Settlement Agreement (QSA) that involves other agencies that have claims against water from the Colorado River. The QSA has not been completed yet.

In order to complete the water transfer, IID and SDCWA are required to obtain certain environmental permits, including incidental take permits under CESA. This bill authorizes DFG to enter into an NCCP with IID and SDCWA, as long as the NCCP is consistent with the long-term restoration of the Salton Sea.

Current law, mainly the NCCP Act of 2002, authorizes DFG to enter into an NCCP with any person or entity that requests it. However, this bill places an additional requirement on the NCCP needed for the IID/SDCWA transfer. Restoration of the Salton Sea will require some means of slowing the rate of accumulation of salt in the Sea, or increasing the flow of fresh water into the Sea. Many projects have been proposed for restoring the Sea in the past thirty years, although none has yet been judged feasible. Whatever means is used to restore the Sea, it will be very expensive. The bill identifies restoration of the Sea as a responsibility of the state and federal governments.

Linking approval of an NCCP to long-term restoration of the Salton Sea presents a considerable obstacle to the water transfer. It is unlikely, though, that DFG would approve the necessary permits without at least a plan to prevent any increased deterioration of the Sea, if not restoration.

In the event that the QSA is not completed and adopted by all the parties involved, this bill would have no effect. Negotiations on the QSA are continuing.

REGISTERED SUPPORT / OPPOSITION :

Support

United Anglers Marine Resource Conservation Program
United Anglers of Southern California



Opposition

None on file.

Analysis Prepared by : Jeffrey Volberg / W., P. & W. / (916) 319-2096

BILL ANALYSIS

SENATE RULES COMMITTEE
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SB 277

THIRD READING

Bill No: SB 277
Author: Ducheny (D)
Amended: 4/29/03
Vote: 21

SENATE NATURAL RES. & WILD. COMMITTEE : 9-0, 4/22/03
AYES: Kuehl, Oller, Alpert, Bowen, Denham, Hollingsworth, Ortiz, Sher, Torlakson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Natural Community Conservation Plan: Salton Sea

SOURCE : Author

DIGEST : This bill authorizes the Department of Fish and Game to approve a Natural Community Conservation Plan for the area in and around the Salton Sea as part of a proposed water transfer to San Diego if the plan is consistent with the long-term restoration of the Salton Sea.

ANALYSIS : This measure contains findings and declarations as to the importance of the Salton Sea, the importance of reducing Colorado River water usage in California, and the importance of protecting the wildlife, air and water quality, and recreational opportunities in the Salton Sea area. This bill authorizes the Department of Fish and Game to approve a Natural Community Conservation Plan (NCCP) that is proposed as a condition of, or that is related to, a water transfer between the

CONTINUED



Imperial Irrigation District and San Diego County Water Authority if it determines that the plan, is consistent with the long-term restoration of the Salton Sea.

Comments

The proposed water transfer between the Imperial Irrigation District and San Diego is presently the subject of ongoing discussions among a variety of parties. Assuming that the transfer is approved, it is highly likely that a NCCP will be prepared. The NCCP will be an extensive undertaking that will establish management criteria for numerous species, including threatened, endangered and fully protected species. The exact geographic reach of the NCCP has not yet been determined, although it is clear that the NCCP will cover much of the Imperial Irrigation District

and the drains and other waterways that provide inflow to the Salton Sea.

Related legislation

The Salton Sea and the proposed water transfer to San Diego has been the subject of numerous bills, including SB 482 (Kuehl) from 2002 which was signed by the governor and SB 317 (Kuehl), currently pending. SB 317 re-states the provisions of SB 482 which did not take effect because the water transfer was not approved prior to the end of 2002.

SB 317 (Kuehl) would not require an NCCP at the Salton Sea, although it explicitly recognizes that an NCCP may well be an eligible expenditure of the $50 million in Prop. 50 funds that SB 317 proposes to allocate to Salton Sea restoration.

Moreover, SB 317 conditions its proposed relaxation of the state's fully protected species laws on a finding from the Department of Fish and Game that the proposed transfer will not foreclose alternatives for restoration of the Salton Sea.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

CP:nl 5/19/03 Senate Floor Analyses



SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS
1

SENATE NATURAL RESOURCES AND WILDLIFE BILL NO:SB 277
Senator Sheila Kuehl, Chair AUTHOR:Ducheny
VERSION: 4/9/03

FISCAL: yes
URGENCY:no
CONSULTANT:Bill Craven
HEARING DATE:4-22-03

SUBJECT : Salton Sea

ISSUE : Shall a Natural Community Conservation Plan that will be developed for the area in and around the Salton Sea as part of a proposed water transfer to San Diego be required to take into account the long-term restoration of the Salton Sea?

EXISTING LAW : The Salton Sea and the proposed water transfer to San Diego has been the subject of numerous bills, including SB 482 (Kuehl) from 2002 which was signed by the governor and SB 317 (Kuehl), currently pending. SB 317 re-states the provisions of SB 482 which did not take effect because the water transfer was not approved prior to the end of 2002.

Nothing in the existing Natural Community Conservation Planning Act requires the development of an NCCP at the Salton Sea. In recent weeks, as water transfer negotiations have proceeded, it has become increasingly clear that an NCCP in and around the Salton Sea would be developed.

SB 317 (Kuehl) would not require an NCCP at the Salton Sea, although it explicitly recognizes that an NCCP may well be an eligible expenditure of the $50 million in Prop. 50 funds that SB 317 proposes to allocate to Salton Sea restoration.

Moreover, SB 317 conditions its proposed relaxation of the state's fully protected species laws on a finding from the Department of Fish and Game that the proposed transfer will not foreclose alternatives for restoration of the Salton Sea.

PROPOSED LAW : This measure contains findings and declarations as to the importance of the Salton Sea, the

importance of reducing Colorado River water usage in California, and the importance of protecting the wildlife, air and water quality, and recreational opportunities in the Salton Sea area. Section 2 of the bill would require the Metropolitan Water District to develop an NCCP pertaining to the water transfer from the Imperial Irrigation District to San Diego "to ensure that the plan takes into account the long-term restoration of the Salton Sea."

BACKGROUND : The proposed water transfer between the Imperial Irrigation District and San Diego is presently the subject of ongoing discussions among a variety of parties. Assuming that the transfer is approved, it is highly likely that an NCCP will be prepared. The NCCP will be an extensive undertaking that will establish management criteria for numerous species, including threatened, endangered and fully protected species. The exact

geographic reach of the NCCP has not yet been determined, although it is clear that the NCCP will cover much of the Imperial Irrigation District and the drains and other waterways that provide inflow to the Salton Sea.

On a separate track, the Resources Agency, the state's environmental community, and other interests are pressing for a clear and unambiguous state commitment to restoration of the Salton Sea. While SB 317 (Kuehl) pledges $50 million to that effort, no one believes that will be a sufficient amount of money. While funding is always an issue, even if additional resources are committed through a future water or resources bond, the development of a Salton Sea restoration plan is equally pressing. Several respected engineering firms are now openly discussing "self-financing" restoration options that involve the prospect of desalinating agricultural drainage water, selling that water to coastal California, and using proceeds from that sale to pay for dikes and other improvements in the Sea. These plans were developed upon the release of an RFP issued by the Salton Sea Authority. All such plans, at this point, are speculative in that they have not been fully vetted, and no funding commitments have been made.

On the other hand, the life of the Salton Sea is running out, and those who seek the restoration of the Sea recognize that time is of the essence in developing a

restoration plan. Scientific estimates predict the sea may become hypersaline and not support its fisheries within a range of years that begins in only 15 years. Developing and implementing a plan could take nearly that long. SB 482, and now SB 317 (Kuehl), requires a report from a new Resources Agency stakeholder group on Salton Sea restoration options. A related piece of legislation, SB 623 (Ducheny), advances by two years the due date on this report.

The intent of both authors is to demonstrate the urgency of Salton Sea restoration.

ARGUMENTS IN SUPPORT : None received.

ARGUMENTS IN OPPOSITION : None received.

STAFF COMMENTS : Although the bill, as amended, points to the Metropolitan Water District as the lead agency for the NCCP, that may not be the case. If this bill does nothing else, it will likely inform the Committee and the public which water agency (or combination of agencies) will assume the lead agency role. Ultimately, however, the point of the bill is that any NCCP approved by the Department must "take into account" the long-term restoration of the Salton Sea.

It may be better to rephrase Section 2 as follows:

The Department of Fish and Game may approve a Natural Community Conservation Plan that is proposed as a condition of, or that is related to, a water transfer between the Imperial Irrigation District and the San Diego County Water Authority only if it finds that such a plan is consistent with the long-term restoration of the Salton Sea.

SUPPORT : None received.

OPPOSITION : None received.

BILL ANALYSIS

SENATE RULES COMMITTEE
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SB 317

UNFINISHED BUSINESS

Bill No: SB 317
Author: Kuehl (D), et al
Amended: 9/9/03
Vote: 21

SENATE NATURAL RES. & WILD. COMMITTEE : 8-0, 4/8/03
AYES: Kuehl, Oller, Alpert, Bowen, Denham, Ortiz, Sher, Torlakson

SENATE APPROPRIATIONS COMMITTEE : 12-1, 5/29/03
AYES: Alpert, Battin, Ashburn, Bowen, Burton, Escutia, Johnson, Karnette, Machado, Murray, Poochigian, Speier
NOES: Aanestad

SENATE FLOOR : 35-2, 6/4/03
AYES: Ackerman, Alarcon, Alpert, Ashburn, Battin, Bowen, Brulte, Burton, Denham, Ducheny, Dunn, Escutia, Figueroa, Florez, Hollingsworth, Johnson, Karnette, Kuehl, Machado, Margett, McPherson, Morrow, Murray, Oller, Ortiz, Perata, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Aanestad, McClintock

ASSEMBLY FLOOR : 79-0, 9/9/03 - See last page for vote

SUBJECT : Salton Sea

SOURCE : Author

DIGEST : This bill enacts a narrow, regional waiver of the state's fully protected species statutes in order to

CONTINUED



accommodate a proposed water transfer from Imperial Irrigation District to San Diego, and requires that additional transfers of water to the State Department of Water Resources that are then re-sold to the Metropolitan Water District serve as a basis for funding the eventual restoration of the Salton Sea.

Assembly amendments , among others:

1. Require the Quantification Settlement Agreement to be executed by October 12, 2003.

2. Require as a condition for incidental take of fully protected species that the department first determine that specified enforceable commitments are in effect.

3. Require the Secretary of the Resources Agency to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife.

4. Require that during the initial term that the agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee.

5. Provide that during the period the agreement is in effect and water delivery obligations are being met, no person or local agency may seek additional conserved Colorado River Water until the Imperial Irrigation District has adopted a resolution offering to make reserved water available.

ANALYSIS :

Existing law : Fish and Game Code Sections 3511, 4700, 5050, and 5515 collectively list 37 "fully" protected species for which take is not allowed except for necessary research or live capture and relocation of birds for the protection of livestock. Additionally, SB 482 (Kuehl), adopted in 2002, requires the secretary to establish an advisory committee representing the parties interested in the future of the Salton Sea.



Proposed Law : This bill would authorize the incidental take of fully protected species if the QSA is executed by the appropriate parties on or before October 12, 2003. This deadline is the same as the constitutional deadline for the governor to act on bills passed this session. The bill, if enacted, would also require as a condition for incidental take of fully protected species that DFG first determine that enforceable commitments requiring all of the following are in effect:

1. That Imperial Irrigation District (IID) transfer 800,000 acre-feet of conserved water to the State Department of Water Resources (DWR) on a mutually agreed upon schedule for $175 per acre-foot. The conservation methods will be selected by IID and the price will be adjusted for inflation on an annual basis.

2. That IID transfer up to 800,000 acre-feet of additional conserved water to DWR during the first 15 years of the QSA, on the schedule established for the mitigation water that was previously to be transferred to the San Diego County Water Authority (SDCWA), or on a mutually agreed upon schedule. The mitigation water shall be provided to DWR at no additional cost for the water in addition after the payment for the water from the mitigation fund.

3. That DWR retain responsibility for any environmental impacts, including Salton Sea salinity, related to use or transfer of the 800,000 acre-feet of conserved water transferred to it by IID.

4. That Metropolitan Water District of Southern California (MWD), on a mutually agreed upon schedule, purchase up to 1.6 million acre-feet of water transferred by IID to DWR at a price of not less than $250 per acre-foot. The price will be adjusted for inflation on an annual basis. The proceeds will be deposited by DWR into the Salton Sea Restoration Fund (Fund) established by SB 277 (Ducheny) of the 2003-04 Regular Session.

5. That MWD pay not less than $20 per acre foot for all

special surplus water received by MWD as a result of the potential reinstatement of the Interim Surplus



Guidelines by the United States Department of Interior, subtracting any water delivered to Arizona as a result of shortage. The price shall be adjusted for inflation on an annual basis. These funds will be paid into the Salton Sea Restoration Fund. MWD will receive a credit against future mitigation obligations for the Lower Colorado River Multi-Species Conservation Plan.

6. That Coachella Valley Water District (CVWD), IID and San Diego County Water Authority (SDCWA) pay a combined total of $30 million dollars to the Salton Sea Restoration Fund.

The bill also:

1. Requires the secretary of the Resources Agency (secretary), in consultation with specified entities, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem.

2. Requires development of a process, with deadlines, for release of the restoration study report and programmatic environmental documents.

3. Requires the secretary to use all available authority to enter into a Memorandum of Understanding with the secretary of the Interior for the purpose of obtaining federal participation in the restoration of the Salton Sea.

4. Requires the restoration study to establish an evaluation of the selection of alternatives that will allow for consideration of a range of alternatives and an evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative. This section of the bill also requires the development of a recommended plan for the use or transfer of the mitigation water and requires that the preferred alternative be consistent with the requirements of SB 654 of the 2003-2004 Regular Session to provide for the maximum feasible attainment of the restoration of the long-term stable aquatic and



shoreline habitat at the Salton Sea, the elimination of air quality impacts from the restoration projects, and protection of water quality. This section of the bill also requires a proposed funding plan to implement the preferred alternative.

5. Requires the preferred alternative to be submitted to the Legislature by December 31, 2006.

6. Requires the secretary to establish an advisory committee selected to provide balanced representation of numerous interests. This advisory committee will be consulted throughout all stages of the alternative

selection process.

7. Amends the Water Code, as it was amended in SB 482, to provide that during the period that the QSA is in effect, and the IID is meeting its water delivery obligations, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until IID has adopted a resolution offering to make conserved Colorado River water available.

8. Specifies that during the initial term (the first 45 years) that the QSA is in effect, that any water transferred by IID shall be subject to an ecosystem restoration fee established by DFG, in consultation with the State Water Resources Control Board, to cover the proportional impacts to the Salton Sea of the additional water transfer. This fee, shall be deposited in the Salton Sea Restoration Fund and shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The ecosystem restoration fee shall not apply to the QSA itself and other specified transfers.

   Other Water Code provisions that were originally enacted in SB 482 are replicated in SB 317.

9. This bill is "triple-joined" to SB 277 (Ducheny) and SB 654 (Machado), which are the other two bills that establish the state framework for implementation of the QSA by the water agencies.



Comments

This bill is one of three bills necessary to implement the QSA. Together with the other two bills, referenced earlier, this package of bills represents a negotiated agreement between the four affected water agencies, the administration, and several key conservation and environmental groups. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the state's annual use of Colorado River water to its entitlement of 4.4 million acre-feet. The Legislature passed and the Governor signed SB 482 (Kuehl), Chapter 617, Statutes of 2002, which authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water if certain conditions were met. The deadline of December 31, 2002 in SB 482 for execution of the QSA was not met, and the authorization to allow DFG to authorize take of fully protected species became inoperative. DFG must have that authority because implementation of the QSA will likely affect at least one fully protected species.

Additionally, the proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea, thereby resulting in accelerated concentration of salts and nutrients. The issue of Salton Sea salinity has become a major focus because salinity levels will eventually interfere with fish reproduction, a major food source of the brown pelican, a fully protected species. Even greater impacts are feared for the hundreds of species of resident, migratory, and special status birds that utilize the Salton Sea as part of their annual migration along the Pacific Flyway. These species include species listed as threatened and endangered, as well as brown pelicans.

The bill commits the state to a restoration path for the Salton Sea, and requires the secretary to undertake a restoration study to determine a preferred alternative. The report is to be submitted to the Legislature by December 31, 2006. The bill also provides for a stream of



funding for the Fund established in SB 277. Funding sources include: (1) the difference between the starting $175 per acre-foot selling price and the $250 purchase price of the 800,000 acre-feet of IID conserved water, adjusted for inflation on an annual basis, minus DWR's costs and reasonable administrative expenses; (2) the $20 per acre-foot charge paid by MWD, adjusted for inflation on an annual basis, for special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines; and, (3) $30 million paid to the Fund by CVWD, IID, and SDCWA. It is estimated that the various sources of funding will generate up to $300 million for the restoration program.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000 acre-feet of surplus water. Over the 75 year life of the QSA more than 30 million acre-feet of water will be transferred from primarily agricultural uses to primarily urban uses.

Support : None received, although at the Assembly policy committee hearing on 9/5/03, this bill was supported by the four affected water agencies, the administration, the Association of California Water Agencies, Imperial County, and Audubon, Planning and Conservation League, and Defenders of Wildlife.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

Unknown.

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu,



Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg,

Strickland, Vargas, Wiggins, Wolk, Wyland, Yee, Wesson

CP:sl 9/10/03 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS
1

SENATE COMMITTEE ON NATURAL RESOURCES AND WILDLIFE
Senator Sheila Kuehl, Chair
2003-2004 Regular Session

BILL NO: SB 317
AUTHOR: Kuehl
AMENDED: September 9, 2003
FISCAL: yes HEARING DATE:
URGENCY: no CONSULTANT: Bill Craven
SUBJECT: Quantification Settlement Agreement; fully protected species

Summary: Shall the Legislature enact a narrow, regional waiver of the state's fully protected species statutes in order to accommodate a proposed water transfer from Imperial Irrigation District to San Diego, and shall additional transfers of water to the Department of Water Resources that are then re-sold to the Metropolitan Water District serve as a basis for funding the eventual restoration of the Salton Sea?

Existing Law: Fish and Game Code Sections 3511, 4700, 5050, and 5515 collectively list 37 "fully" protected species for which take is not allowed except for necessary research or live capture and relocation of birds for the protection of livestock. Additionally, SB 482 (Kuehl), adopted in 2002, requires the Secretary to establish an advisory committee representing the parties interested in the future of the Salton Sea.

Proposed Law: This bill would authorize the incidental take of fully protected species if the QSA is executed by the appropriate parties on or before October 12, 2003. This deadline is the same as the constitutional deadline for the governor to act on bills passed this session. The bill, if enacted, would also require as a condition for incidental take of fully protected species that DFG first determine that enforceable commitments requiring all of the following are in effect:

(a) That Imperial Irrigation District (IID) transfer 800,000 acre-feet of conserved water to the Department of Water Resources (DWR) on a mutually agreed upon schedule for $175 per acre-foot. The conservation methods will be selected by IID and the price will be adjusted for inflation on an annual basis.

(b) That IID transfer up to 800,000 acre-feet of additional conserved water to DWR during the first 15 years of the QSA, on the schedule established for the mitigation water that was previously to be transferred to the San Diego County Water Authority (SDCWA), or on a mutually agreed upon schedule. The mitigation water shall be provided to DWR at no additional cost for the water in addition after the payment for the water from the mitigation fund.

(c) That DWR retain responsibility for any environmental impacts, including Salton Sea salinity, related to use or transfer of the 800,000 acre-feet of conserved water transferred

to it by IID.

(d) That Metropolitan Water District of Southern California (MWD), on a mutually agreed upon schedule, purchase up to 1.6 million acre-feet of water transferred by IID to DWR at a price of not less than $250 per acre-foot. The price will be adjusted for inflation on an annual basis. The proceeds will be deposited by DWR into the Salton Sea Restoration Fund (Fund) established by SB 277 (Ducheny) of the 2003-04 Regular Session.

(e) That MWD pay not less than $20 per acre foot for all special surplus water received by MWD as a result of the potential reinstatement of the Interim Surplus Guidelines by the United States Department of Interior, subtracting any water delivered to Arizona as a result of shortage. The price shall be adjusted for inflation on an annual basis. These funds will be paid into the Salton Sea Restoration Fund. MWD will receive a credit against future mitigation obligations for the Lower Colorado River Multi-Species Conservation Plan.

(g) That Coachella Valley Water District (CVWD), IID and San Diego County Water Authority (SDCWA) pay a combined total of $30 million dollars to the Salton Sea Restoration Fund.

The bill also:

(1) Requires the Secretary of the Resources Agency (Secretary), in consultation with specified entities, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem.

(2) Requires development of a process, with deadlines, for release of the restoration study report and programmatic environmental documents.

(3)Requires the Secretary to use all available authority to enter into a Memorandum of Understanding with the Secretary of the Interior for the purpose of obtaining federal participation in the restoration of the Salton Sea.

(4)Requires the restoration study to establish an evaluation of the selection of alternatives that will allow for consideration of a range of alternatives and an evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative. This section of the bill also requires the development of a recommended plan for the use or transfer of the mitigation water and requires that the preferred alternative be consistent with the requirements of SB 654 of the 2003-2004 Regular Session to provide for the maximum feasible attainment of the restoration of the long-term stable aquatic and shoreline habitat at the Salton Sea, the elimination of air quality impacts from the restoration projects, and protection of water quality. This section of the bill also requires a proposed funding plan to implement the preferred alternative.

(5) Requires the preferred alternative to be submitted to the Legislature by December 31, 2006.

(6) Requires the Secretary to establish an advisory committee selected to provide balanced representation of numerous interests. This advisory committee will be consulted throughout all stages of the alternative selection process.

(7) Amends the Water Code, as it was amended in SB 482, to provide that during the period that the QSA is in effect, and the IID is meeting its water delivery obligations, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until IID has adopted a resolution offering to

make conserved Colorado River water available.

(8)Specifies that during the initial term (the first 45 years) that the QSA is in effect, that any water transferred by IID shall be subject to an ecosystem restoration fee established by DFG, in consultation with the State Water Resources Control Board, to cover the proportional impacts to the Salton Sea of the additional water transfer. This fee, shall be deposited in the Salton Sea Restoration Fund and shall not exceed 10% of the amount of any compensation received for the transfer of the water. The ecosystem restoration fee shall not apply to the QSA itself and other specified transfers.

Other Water Code provisions that were originally enacted in SB 482 are replicated in SB 317.

(9) This bill is "triple-joined" to SB 277 (Ducheny) and SB 654 (Machado), which are the other 2 bills that establish the state framework for implementation of the QSA by the water agencies.

Arguments in Support: None received.

Arguments in Opposition: None received.

Comments: This bill is one of three bills necessary to implement the QSA. Together with the other 2 bills, referenced earlier, this package of bills represents a negotiated agreement between the four affected water agencies, the administration, and several key conservation and environmental groups. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the state's annual use of Colorado River water to its entitlement of 4.4 million acre-feet. The Legislature passed and the Governor signed SB 482 (Kuehl), Chapter 617, Statutes of 2002, which authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water if certain conditions were met. The deadline of December 31, 2002 in SB 482 for execution of the QSA was not met, and the authorization to allow DFG to authorize take of fully protected species became inoperative. DFG must have that authority because implementation of the QSA will likely affect at least one fully protected species.

Additionally, the proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea, thereby resulting in accelerated concentration of salts and nutrients. The issue of Salton Sea salinity has become a major focus because salinity levels will eventually interfere with fish reproduction, a major food source of the brown pelican, a fully protected species.  Even greater impacts are feared for the hundreds of species of resident, migratory, and special status birds that utilize the Salton Sea as part of their annual migration along the Pacific Flyway. These species include species listed as threatened and endangered, as well as brown pelicans.

The bill commits the state to a restoration path for the Salton

Sea, and requires the Secretary to undertake a restoration study to determine a preferred alternative. The report is to be submitted to the Legislature by December 31, 2006. The bill also provides for a stream of funding for the Fund established in SB 277. Funding sources include: 1) the difference between the starting $175 per acre-foot selling price and the $250 purchase price of the 800,000 acre-feet of IID conserved water, adjusted for inflation on an annual basis, minus DWR's costs and reasonable administrative expenses; 2) the $20 per acre-foot charge paid by MWD, adjusted for inflation on an annual basis, for special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines; and, 3) $30 million paid to the Fund by CVWD, IID, and SDCWA. It is estimated that the various sources of funding will generate up to $300 million for the restoration program.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000 acre-feet of surplus water. Over the 75 year life of the QSA more than 30 million acre-feet of water will be transferred from primarily agricultural uses to primarily urban uses.

SUPPORT:
None received, although at the Assembly policy committee hearing on 9/5/03, this bill was supported by the four affected water agencies, the administration, the Association of California Water Agencies, Imperial County, and Audubon, Planning and Conservation League, and Defenders of Wildlife.

OPPOSITION:
None received

BILL ANALYSIS



(Without Reference to File)

SENATE THIRD READING
SB 317 (Kuehl)
As Amended September 9, 2003
Majority vote

SENATE VOTE :Vote not Relevant

WATER, PARKS & WILDLIFE 19-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | | |

SUMMARY : Allows the Department of Fish and Game (DFG) to authorize the "take" of fully protected species in connection with projects undertaken to implement the Quantification Settlement Agreement (QSA) if the QSA is executed on or before October 12, 2003, and specified conditions are met. Specifically, this bill :

1)Requires, as a condition for the authorization to allow take of fully protected species, that the QSA be executed by the appropriate parties on or before October 12, 2003.

2)Requires, as a condition for the authorization to allow take of fully protected species, that DFG has determined that the appropriate agreements have been executed to address environmental impacts at the Salton Sea that include enforceable commitments requiring all of the following:

a) Imperial Irrigation District (IID) to transfer to the Department of Water Resources (DWR), on a mutually agreed upon schedule, 800,000 acre-feet of conserved water, the conservation methods selected by IID, for $175 per acre-foot. The price to be adjusted for inflation on an annual basis;



b) IID to transfer up to 800,000 acre-feet of additional conserved water to DWR during the first 15 years of the QSA, on the schedule established for the mitigation water that was previously to be transferred to the San Diego County Water Authority (SDCWA), or on a mutually agreed upon schedule. Provides that the mitigation water shall be provided to DWR for no cost for the water in addition to the payment for the water from the mitigation fund;

c) DWR responsibility for any environmental impacts, including Salton Sea salinity, related to use or transfer of the 800,000 acre-feet of conserved water transferred by IID to DWR;

d) DWR responsibility for environmental impacts related to

Salton Sea salinity related to the use or transfer of the mitigation water transferred by IID to DWR;

e) Metropolitan Water District of Southern California (MWD), on a mutually agreed upon schedule, to purchase up to 1.6 million acre-feet of the water transferred by IID to DWR at a price of not less than $250 per acre-foot. The price to be adjusted for inflation on an annual basis. Proceeds to be deposited by DWR into the Salton Sea Restoration Fund (Fund) established by SB 277 of the 2003-04 Regular Session;

f) MWD to pay not less than $20 per acre foot for all special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines by the United States Department of Interior, subtracting any water delivered to Arizona as a result of shortage. The price shall be adjusted for inflation on an annual basis. Funds to be paid into the Fund. MWD to receive a credit against future mitigation obligations for the Lower Colorado River Multi-Species Conservation Plan; and,

g) Coachella Valley Water District (CVWD), IID and SDCWA to pay a combined total of $30 million dollars to the Fund.

1)Requires the Secretary of the Resources Agency (Secretary), in consultation with specified entities, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of



wildlife dependent on that ecosystem.

2)Requires development of a process, with deadlines, for release of the restoration study report and programmatic environmental documents.

3)Requires the Secretary to use all available authority to enter into a memorandum of understanding with the Secretary of the Interior for the purpose of obtaining federal participation in the restoration of the Salton Sea.

4)Requires the restoration study to establish:

a) An evaluation of, and suggested criteria for, the selection of alternatives that will allow for consideration of a range of alternatives;
b) An evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative;
c) A recommended plan for the use or transfer of the mitigation water. No mitigation water may be transferred unless the Secretary finds that the transfer is consistent with the preferred alternative for Salton Sea restoration;
d) The selection of the preferred alternative is consistent with the requirements of SB 654 of the 2003-2004 Regular Session to provide for the maximum feasible attainment of restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea, the elimination of air quality impacts from the restoration projects, and protection of water quality; and,
e) A proposed funding plan to implement the preferred alternative.

1)Requires the restoration report identifying the preferred alternative to be submitted to the Legislature by December 31, 2006.

2)Requires the Secretary to establish an advisory committee selected to provide balanced representation of the following interests:

a) Agriculture;
b) Local governments;
c) Conservation groups;



d) Tribal governments;
e) Recreational users;
f) Water agencies; and,
g) Air pollution control districts.

1)Allows the Secretary to ask appropriate federal agency representatives to serve on the advisory committee in an ex-officio capacity.

2)Requires the Resources Agency to consult with the advisory committee throughout all stages of the alternative selection process.

3)Specifies that during the period that the QSA is in effect, and the IID is meeting its water delivery obligations, as specified, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

4)Specifies that during the initial term that the QSA is in effect, that any water transferred by IID shall be subject to an ecosystem restoration fee established by DFG, in consultation with the State Water Resources Control Board, to cover the proportional impacts to the Salton Sea of the additional water transfer.

5)Specifies that the ecosystem restoration fee shall not exceed 10% of the amount of any compensation received for the transfer of the water, and that the fee be deposited in the Fund.

6)Specifies that the ecosystem restoration fee shall not apply to:

a) Transfers to meet water delivery obligations under the QSA and Related Agreements as defined in that agreement;
b) Transfers to comply with the provisions of existing law relative to salinity levels at the Salton Sea; or,
c) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between IID and MWD.

1)Conditions the following provisions on the execution of the



QSA on or before October 12, 2003:

a) During the term of the QSA and for six years thereafter, in any evaluation or assessment of the IID's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields;

b) If a party to the QSA engages in water efficiency conservation measures or land fallowing conservation measures to carry out a QSA transfer or to mitigate the environmental impacts of a QSA transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use the water conserved;

c) During the period that the QSA is in effect and the IID is meeting its water delivery obligations no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make the conserved Colorado River water available; and,

d) During the initial term in which the QSA in effect, any water transferred, except as otherwise specified, shall be subject to an ecosystem restoration fee, not to exceed 10 percent of the amount of any compensation received for transfer of the water.

1)Specifies that the bill shall become operative only if SB 277 and SB 654 of the 2003-04 Regular Session are both chaptered and become effective on or before January 1, 2004.

FISCAL EFFECT : Unknown

COMMENTS : This bill is one of three bills necessary to implement the QSA. Enactment of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 654 (Machado). These three bills represent a negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.



The Assembly Water, Parks and Wildlife Committee has held several informational hearings on the QSA, the last on January 14, 2003. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

The Legislature passed and the Governor signed SB 482 (Kuehl), Chapter 617, Statutes of 2002, which authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water if certain conditions were met. The deadline of December 31, 2002 in SB 482 for execution of the QSA was not met, and the authorization to allow DFG to authorize take of fully protected species became inoperative. As such authorization is key to implementation of the QSA, the Governor's Office assumed the role of mediator as talks resumed in an effort to reach an accord.

Complicating the already complex discussions was the question as to how to address the desire of conservation and environmental groups to restore at some level the Salton Sea given the state's fiscal crisis. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the nation, would greatly impact the fish-eating birds that currently flock to the

Salton Sea which is a vital link in the Pacific Flyway. There are approximately 400 species of resident, migratory, and special status birds that utilize the Salton Sea. These species include species listed as threatened and endangered, as well as brown pelicans which are designated in California statute as fully protected species.

The bill commits the state to a restoration path for the Salton Sea, and requires the Secretary to undertake a restoration study to determine a preferred alternative. The report is to be



submitted to the Legislature by December 31, 2006. The bill also provides for a stream of funding for the Fund established in SB 277. Funding sources include: 1) the difference between the starting $175 per acre-foot selling price and the $250 purchase price of the 800,000 acre-feet of IID conserved water, adjusted for inflation on an annual basis, minus DWR's costs and reasonable administrative expenses; 2) the $20 per acre-foot charge paid by MWD, adjusted for inflation on an annual basis, for special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines; and, 3) $30 million paid to the Fund by CVWD, IID, and SDCWA. It is estimated that the various sources of funding will generate up to $300 million for the restoration program.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000 acre-feet of surplus water. Over the 75 year life of the QSA more than 30 million acre-feet of water will be transferred from primarily agricultural uses to primarily urban uses.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

FN: 0003965

BILL ANALYSIS



Date of Hearing: September 5, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 317 (Kuehl) - As Amended: September 5, 2003

SENATE VOTE : Not Relevant

SUBJECT : Quantification Settlement Agreement (QSA): Salton Sea.

SUMMARY : Allows the Department of Fish and Game (DFG) to authorize the "take" of fully protected species in connection with projects undertaken to implement the QSA if the QSA is executed on or before October 12, 2003 and specified conditions are met. Specifically, this bill :

1)Requires, as a condition for the authorization to allow take of fully protected species, that the QSA be executed by the appropriate parties on or before October 12, 2003.

2)Requires, as a condition for the authorization to allow take of fully protected species, that DFG has determined that the appropriate agreements have been executed to address environmental impacts at the Salton Sea that include enforceable commitments requiring all of the following:

a) Imperial Irrigation District (IID) to transfer to the Department of Water Resources (DWR), on a mutually agreed upon schedule, 800,000 acre-feet of conserved water, the conservation methods selected by IID, for $175 per acre-foot. The price to be adjusted for inflation on an annual basis.

b) IID to transfer up to 800,000 acre-feet of additional conserved water to DWR during the first 15 years of the QSA, on the schedule established for the mitigation water that was previously to be transferred to the San Diego County Water Authority (SDCWA), or on a mutually agreed upon schedule. Provides that the mitigation water shall be provided to DWR for no cost for the water in addition to the payment for the water from the mitigation fund.

c) DWR responsibility for any environmental impacts, including Salton Sea salinity, related to use or transfer



of the 800,000 acre-feet of conserved water transferred by IID to DWR.

d) DWR responsibility for environmental impacts related to Salton Sea salinity related to the use or transfer of the mitigation water transferred by IID to DWR.

e) Metropolitan Water District of Southern California (MWD), on a mutually agreed upon schedule, to purchase up to 1.6 million acre-feet of the water transferred by IID to DWR at a price of not less than $250 per acre-foot. The price to be adjusted for inflation on an annual basis. Proceeds to be deposited by DWR into the Salton Sea Restoration Fund (Fund) established by SB 277 of the 2003-04 Regular Session.

f) MWD to pay not less than $20 per acre foot for all special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines by the United States Department of Interior, subtracting any water delivered to Arizona as a result of shortage. The price shall be adjusted for inflation on an annual basis. Funds to be paid into the Salton Sea Restoration Fund. MWD to receive a credit against future mitigation obligations for the Lower Colorado River Multi-Species Conservation Plan.

g) Coachella Valley Water District (CVWD), IID and San Diego County Water Authority (SDCWA) to pay a combined total of $30 million dollars to the Salton Sea Restoration Fund.

1)Requires the Secretary of the Resources Agency (Secretary), in consultation with specified entities, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem.

2)Requires development of a process, with deadlines, for release of the restoration study report and programmatic environmental documents.

3)Requires the Secretary to use all available authority to enter into a Memorandum of Understanding with the Secretary of the Interior for the purpose of obtaining federal participation in



the restoration of the Salton Sea.

4)Requires the restoration study to establish:

a) An evaluation of, and suggested criteria for, the selection of alternatives that will allow for consideration of a range of alternatives;
b) An evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative;
c) A recommended plan for the use or transfer of the mitigation water. No mitigation water may be transferred unless the Secretary finds that the transfer is consistent with the preferred alternative for Salton Sea restoration;
d) The selection of the preferred alternative is consistent with the requirements of SB 654 of the 2003-2004 Regular Session to provide for the maximum feasible attainment of restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea, the elimination of air quality impacts from the restoration projects, and protection of water quality; and,
e) A proposed funding plan to implement the preferred alternative.

1)Requires the restoration report identifying the preferred alternative to be submitted to the Legislature by December 31, 2006.

2)Requires the Secretary to establish an advisory committee selected to provide balanced representation of the following interests:

a) Agriculture;
b) Local governments;
c) Conservation groups;
d) Tribal interests;
e) Recreational users; and,
f) Water agencies.

1)Allows the Secretary to ask appropriate federal agency

representatives to serve on the advisory committee in an ex-officio capacity.

2)Requires the Resources Agency to consult with the advisory



committee throughout all stages of the alternative selection process.

3)Specifies that during the period that the QSA is in effect, and the IID is meeting its water delivery obligations, as specified, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

4)Specifies that during the initial term that the QSA is in effect, that any water transferred by IID shall be subject to an ecosystem restoration fee established by DFG, in consultation with the State Water Resources Control Board, to cover the proportional impacts to the Salton Sea of the additional water transfer.

5)Specifies that the ecosystem restoration fee shall not exceed 10% of the amount of any compensation received for the transfer of the water, and that the fee be deposited in the Fund.

6)Specifies that the ecosystem restoration fee shall not apply to:

a) Transfers to meet water delivery obligations under the QSA and Related Agreements as defined in that agreement;
b) Transfers to comply with the provisions of existing law relative to salinity levels at the Salton Sea; or,
c) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between IID and MWD.

1)Conditions the following provisions on the execution of the QSA on or before October 12, 2003:

a) During the term of the QSA and for six years thereafter, in any evaluation or assessment of the IID's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.



b) If a party to the QSA engages in water efficiency conservation measures or land fallowing conservation measures to carry out a QSA transfer or to mitigate the environmental impacts of a QSA transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use the water conserved.

c) During the period that the QSA is in effect and the IID is meeting its water delivery obligations no person

or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make the conserved Colorado River water available.

EXISTING LAW

1)Fish and Game Code Sections 3511, 4700, 5050, and 5515 collectively list 37 "fully" protected species for which take is not allowed except for necessary research or live capture and relocation of birds for the protection of livestock.

2)Requires the Secretary to establish an advisory committee representing the parties interested in the future of the Salton Sea.

FISCAL EFFECT : Unknown.

COMMENTS : This bill is one of three bills necessary to implement the QSA. Enactment of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 654 (Machado). These three bills represent a negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.

The Assembly Water, Parks and Wildlife Committee has held several informational hearings on the QSA, the last on January 14, 2003. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

The Legislature passed and the Governor signed SB 482 (Kuehl),



Chapter 617, Statutes of 2002, which authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water if certain conditions were met. The deadline of December 31, 2002 in SB 482 for execution of the QSA was not met, and the authorization to allow DFG to authorize take of fully protected species became inoperative. As such authorization is key to implementation of the QSA, the Governor's Office assumed the role of mediator as talks resumed in an effort to reach an accord.

Complicating the already complex discussions was the question as to how to address the desire of conservation and environmental groups to restore at some level the Salton Sea given the state's fiscal crisis. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the nation, would greatly impact the fish-eating birds that currently flock to the Salton Sea which is a vital link in the Pacific Flyway. There are approximately 400 species of resident, migratory, and special status birds that utilize the Salton Sea. These species include species listed as threatened and endangered, as well as brown pelicans which are designated in California statute as fully protected species.

The bill commits the state to a restoration path for the Salton

Sea, and requires the Secretary to undertake a restoration study to determine a preferred alternative. The report is to be submitted to the Legislature by December 31, 2006. The bill also provides for a stream of funding for the Fund established in SB 277. Funding sources include: 1) the difference between the starting $175 per acre-foot selling price and the $250 purchase price of the 800,000 acre-feet of IID conserved water, adjusted for inflation on an annual basis, minus DWR's costs and reasonable administrative expenses; 2) the $20 per acre-foot charge paid by MWD, adjusted for inflation on an



annual basis, for special surplus water received by MWD as a result of reinstatement of the Interim Surplus Guidelines; and, 3) $30 million paid to the Fund by CVWD, IID, and SDCWA. It is estimated that the various sources of funding will generate up to $300 million for the restoration program.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000 acre-feet of surplus water. Over the 75 year life of the QSA more than 30 million acre-feet of water will be transferred from primarily agricultural uses to primarily urban uses.

REGISTERED SUPPORT / OPPOSITION :

Support

Coachella Valley Water District
Imperial Irrigation District
Metropolitan Water District of Southern California
San Diego County Water Authority

Opposition

None on File.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

BILL ANALYSIS



SENATE THIRD READING
SB 317 (Kuehl)
As Amended June 2, 2003
Majority vote

SENATE VOTE :35-2

WATER, PARKS & WILDLIFE 19-0
APPROPRIATIONS 24-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Frommer, Goldberg, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | Ayes: | Steinberg, Bates, Berg, Lieber, Correa, Daucher, Diaz, Laird, Goldberg, Haynes, Levine, Maldonado, Nation, Negrete McLeod, Nunez, Pacheco, Pavley, Ridley-Thomas, Runner, Samuelian, Simitian, Wiggins, Yee, Mullin |

SUMMARY : Allows the Department of Fish and Game (DFG) to authorize the "take" of fully protected species in connection with projects undertaken to implement the Quantification Settlement Agreement (QSA) if the QSA is executed on or before an unspecified date. Specifically, this bill :

1)Allows DFG to authorize take of fully protected species in connection with projects undertaken to implement the QSA if the QSA is executed on or before an unspecified date, and subject to specified conditions.

2)Specifies that it shall be conclusively presumed that any water conserved by Imperial Irrigation District (IID) through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements.

3)Specifies that a party to the QSA that engages in conservation measures to carry out the QSA transfer or to mitigate the environmental impacts of the QSA will not face forfeiture, diminution, or impairment of the right to use of the water conserved.



4)Specifies that during the period that the QSA is in effect, if IID utilizes land fallowing conservation measures to ensure compliance with environmental requirements related to the Salton Sea, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily unless the district has adopted a resolution offering to make conserved Colorado River water available.

5)Specifies the makeup of the advisory committee required in existing law to be established by the Secretary of Resources (Secretary) as follows:

a) Five representatives of affected local governments or affected water or irrigation districts;

b) Two representatives of the Salton Sea Authority;
c) Three representatives of regional or state conservation groups with a demonstrated interest in the ecosystem of the Salton Sea; and,
d) One Native American representative of tribal interests.

1)Allows federal agency representatives to be asked to serve on the advisory committee in an ex-officio capacity.

2)Allows per diem for travel and lodging for up to five advisory committee members, as determined by the Secretary based on equitable considerations.

3)Deletes the June 30, 2003 due date of a report to the Governor and the Legislature evaluating, among other things, the economic impacts related to the use of land fallowing in the Imperial Valley in connection with the QSA. The new proposed deadline is not specified.

EXISTING LAW :

1)SB 482 (Kuehl) Chapter 617, Statutes of 2002, conditioned #1, #2, #3, and #4 above upon the execution of the QSA on or before December 31, 2002.

2)Section 3511 (13 birds), Section 4700 (9 mammals), Section 5050 (five reptiles and amphibians) and Section 5515 (10 fish) collectively list 37 "fully" protected species for which take is not allowed except for necessary research or live capture



and relocation of birds for the protection of livestock.

3)Requires the Secretary to establish an advisory committee representing the parties interested in the future of the Salton Sea.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis:

1)Significant costs, in the range of $2 to $3 million primarily in fiscal year (FY) 2004-05, to DFG to develop an adaptive management plan regarding endangered species in the Salton Sea region. (General Fund or bond funds)

2)Moderate costs, in the range of $500,000 primarily in FY 2005-05, to the Resources Agency to implement the MOU for Salton Sea protection. (General Fund or bond funds)

3)Minor costs, less then $100,000 in FY 2004-05, to the Resources Agency and the Technology, Trade, and Commerce Agency to prepare the land fallowing report. (General Fund or bond funds)

COMMENTS : The Assembly Water, Parks and Wildlife Committee has held several informational hearings on the QSA, the last on January 14, 2003. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million-acre feet.

SB 482 authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water as long as certain conditions were met. SB 317 will reinstate the same limited exemption contingent upon the execution of the QSA on or before an unspecified date.

The fully protected designation was created in statute prior to the enactment of the California Endangered Species Act. The California fully protected statutes have no federal equivalent. The DFG has determined that the take prohibitions for fully

protected species preclude it from issuing take permits, as it does for endangered, threatened and candidate species. All but seven of the species designated as fully protected are listed by the State as threatened or endangered species. Fully protected



species are found throughout the state.

Resources Agency Secretary Mary Nichols, testifying before the Committee, identified the following problems with the current fully protected species law:

1)Fully protected status conflicts with recovery efforts because there is no allowance for management pursuant to a recovery effort. For example, the fully protected species statute is in direct conflict with regional, multi-species conservation planning, such as the Natural Community Conservation Planning Program.

2)Fully protected status does not allow for incidental take of species due to otherwise lawful activities.

3)The law does not provide for mitigation of fully protected species. Because mitigation is not an option, the Department's only recourse is to initiate legal proceedings to address conflicts with fully protected species.

This bill also specifies the number and makeup of the advisory committee that the Secretary is required to consult with throughout all stages of the Salton Sea alternative selection process. The requirement that an advisory committee be appointed was contained in SB 482.

This bill also substitutes an unspecified date for the June 30, 2003 due date for a report on economic impacts related to the use of land fallowing in the Imperial Valley in connection with the QSA. This provision is in conflict with AB 1770 (Water, Parks & Wildlife Committee) which proposes to extend the due date for that report to January 30, 2005. This conflicting language will be stricken when the author next amends the bill.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

FN: 0003220

BILL ANALYSIS



Date of Hearing: July 16, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 317 (Kuehl) - As Amended: June 2, 2003

Policy Committee: Water, Parks & Wildlife Vote: 19-0

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY

This bill establishes a process at the Department of Fish and Game (DFG), as enacted by SB 482 (Kuehl) in 2002 but not active due to contingency language in that bill, to mitigate and protect species and wildlife habitat at the Salton Sea that will be impacted as a result of a proposed water transfer between the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA).

FISCAL EFFECT

1)Significant costs, in the range of $2 million to $3 million primarily in FY 2004-05, to the DFG to develop an adaptive management plan regarding endangered species in the Salton Sea region. (GF or bond funds.)

2)Moderate costs, in the range of $500,000 primarily in FY 2004-05, to the Resources Agency to implement the MOU for Salton Sea protection. (GF or bond funds.)

3)Minor costs, less than $100,000 in FY 2004-05, to the Resources Agency and the TT&C Agency to prepare the land fallowing report. (GF or bond funds.)

SUMMARY CONTINUED

Specifically, this bill:

1)Allows the DFG to conditionally authorize the take (killing) of fully protected species in the Salton Sea area that will be impacted by projects connected to the water transfer, as



approved by a Quantification Settlement Agreement (QSA), if the QSA is approved by an, as yet, unspecified date.

2)Requires the Resources Secretary to use all available authority to enter into an MOU between the U.S. Secretary of the Interior, the Salton Sea Authority, and the governor to develop, select, and implement projects for protection of the Salton Sea.

3)Presumes that any water conserved by the IID by fallowing agricultural land in the district has been conserved in the same volume as if conserved by efficiency improvements.

4)Enacts provisions protecting the IID's Colorado River water rights connected to the volume of water conserved for purposes of the QSA.

5)Specifies the membership of an already existing Salton Sea advisory committee created to advise the Resources Secretary on matters related to the sea's reclamation.

6)Extends, from June 30, 2003 to an unspecified date, the deadline for a report to be submitted to the governor and Legislature by the Resources Agency and the Technology, Trade, and Commerce (TT&C) Agency evaluating the economic impacts of achieving water conservation through use of land fallowing by the IID.

COMMENTS

1)Rationale . The author intends to establish processes to protect the Salton Sea wildlife habitat in the face of proposed large-scale water transfers from the IID to the SDCWA which would reduce fresh water flow into the sea. The author allows the DFG to conditionally waive application of California's long-standing fully-protected species laws to allow the water transfers and other components of the Colorado River Plan.

2)Fully-Protected Species Laws . While these laws have been in place as far back as the early 1950s, their provisions have become increasingly difficult to carry out in conjunction with more comprehensive, broad-based wildlife conservation measures. There are 38 fully-protected species in the state, many of which are no longer endangered or threatened with



extinction. Implementation of the QSA is impaired by requirements of the fully-protected species laws. These statutes make implementation of innovative water conservation and transfer programs, central to the agreement, considerably more difficult, if not impossible.

3)Prior Legislation . SB 482 (Kuehl) - Chapter 617, Statutes of 2002 required the Secretary of Resources to, among other things, enter into an MOU with the federal Secretary of the Interior, the Salton Sea Authority, and the governor to develop, select, and implement alternatives for projects that lead to the restoration of the Salton Sea. The MOU will establish, when finalized, criteria to evaluate and select alternatives, criteria to determine the magnitude and practicability of costs of construction, operation, and maintenance of each alternative, and a requirement to report on the potential alternatives, the selection of a preferred alternative along with a proposed funding plan, and the issuance of a final alternatives report to Congress and the Legislature. SB 482 did not take effect because it was contingent upon a QSA being agreed to by December 31, 2002, an event that did not occur and has not yet occurred.

4)Other Legislation . SB 623 (Ducheny), also before this committee today, accelerates, by two years to January 1, 2005, the deadline for the Resources Agency to report to Congress and the Legislature on potential alternative projects for Salton Sea restoration. SB 317 (Kuehl), pending in the Assembly Water, Parks & Wildlife Committee, activates some of the provisions contained in SB 482 that did not take effect because the water transfer was not approved before the end of 2002. SB 277 (Ducheny), currently in that same committee, allows the Department of Fish and Game to approve a natural community conservation plan (NCCP), if a plan is designated and required as part of a QSA related to the IID-SDCWA water transfer. SB 411 (Ducheny) outlines the projects that the author feels should be funded with the $50 million of bond proceeds set aside in Prop 50 for protection of land and water resources related to the allocation of Colorado River water.

5)The Salton Sea was accidentally created when a combination of

flooding on the Colorado River and the collapse of a series of diversion dikes along the river resulted in a substantial portion of the Colorado River flow being diverted to the Salton Basin for 18 months during 1905-07. While the initial



fresh water volume has long since evaporated, the lake is replenished primarily by agricultural drainage from the Imperial Valley and, as such, is officially classified by the U.S. Bureau of Reclamation as a drainage reservoir. While the Salton Sea continues to become increasingly saline (its waters are now 26% more saline than the Pacific Ocean), the prospect of substantial volumes of Colorado River water being diverted from the IID to San Diego could accelerate the salination of the Salton Sea and render it considerably less attractive as a wildlife habitat for migrating birds and other species. These species include pelicans, cormorants, various waterfowl, grebes, and corvina.

Analysis Prepared by : Steve Archibald / APPR. / (916) 319-2081

BILL ANALYSIS



Date of Hearing: July 1, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 317 (Kuehl) - As Amended: June 2, 2003

SENATE VOTE : 35-2

SUBJECT : Salton Sea.

SUMMARY : Allows the Department of Fish and Game to authorize the "take" of fully protected species in connection with projects undertaken to implement the Quantification Settlement Agreement (QSA) if the QSA is executed on or before an unspecified date. Specifically, this bill :

1)Allows DFG to authorize take of fully protected species in connection with projects undertaken to implement the QSA if the QSA is executed on or before an unspecified date, and subject to specified conditions.

2)Specifies that it shall be conclusively presumed that any water conserved by Imperial Irrigation district (IID) through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements.

3)Specifies that a party to the QSA that engages in conservation measures to carry out the QSA transfer or to mitigate the environmental impacts of the QSA will not face forfeiture, diminution, or impairment of the right to use of the water conserved.

4)Specifies that during the period that the QSA is in effect, if IID utilizes land fallowing conservation measures to ensure compliance with environmental requirements related to the Salton Sea, that no person or local agency may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily unless the district has adopted a resolution offering to make conserved Colorado River water available.

5)Specifies the makeup of the advisory committee required in existing law to be established by the Secretary of Resources as follows:



a) Five representatives of affected local governments or affected water or irrigation districts;
b) Two representatives of the Salton Sea Authority;
c) Three representatives of regional or state conservation groups with a demonstrated interest in the ecosystem of the Salton Sea; and,
d) One Native American representative of tribal interests.

1)Allows federal agency representatives to be asked to serve on the advisory committee in an ex-officio capacity.

2)Allows per diem for travel and lodging for up to five advisory committee members, as determined by the Secretary based on equitable considerations.
3)Deletes the June 30, 2003 due date of a report to the Governor and the Legislature evaluating, among other things, the

economic impacts related to the use of land fallowing in the Imperial Valley in connection with the QSA. The new proposed deadline is not specified.

EXISTING LAW

1)SB 482, [Chapter 617, Statutes of 2002], conditioned (1), (2), (3), and (4) above upon the execution of the QSA on or before December 31, 2002.

2)Section 3511 (13 birds), Section 4700 (9 mammals), Section 5050 (5 reptiles and amphibians) and Section 5515 (10 fish) collectively list 37 "fully" protected species for which take is not allowed except for necessary research or live capture and relocation of birds for the protection of livestock.

3)Requires the Secretary of Resources to establish an advisory committee representing the parties interested in the future of the Salton Sea.

FISCAL EFFECT : According to the Senate Appropriations Committee analysis:

1)Adaptive Management Program/Implementation. Cost unknown but in excess of $2.5 million for the first five years of a 15 to 20 year project. (Proposition 50/General Fund (GF))

2)Develop MOU. $100,000 (Proposition 50/GF)



3)MOU Implementation. Unknown, potentially significant. (Proposition 50/GF)

4)Advisory Committee. $10,000 (Proposition 50/GF)

5)Resources Agency staff. $200,000 (Proposition 50/GF)

6)QSA Report. $110,000 (Proposition 50/GF)

COMMENTS :

The Assembly Water, Parks and Wildlife Committee has held several informational hearings on the QSA, the last on January 14, 2003. The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million-acre feet.

In 2002 the Legislature passed and the Governor signed SB 482 [Chapter 617, Statutes of 2002], which authorized DFG to authorize the take of fully protected species during activities intended to meet the state's commitment to reduce its use of Colorado River water as long as certain conditions were met. This bill will reinstate the same limited exemption contingent upon the execution of the QSA on or before an unspecified date.

The fully protected designation was created in statute prior to the enactment of the California Endangered Species Act. The California fully protected statutes have no federal equivalent. The Department of Fish and Game has determined that the take prohibitions for fully protected species preclude it from issuing take permits, as it does for endangered, threatened and candidate species. All but seven of the species designated as fully protected are listed by the State as threatened or endangered species. Fully protected species are found throughout the state.

The Water, Parks & Wildlife Committee has held several informational hearings on the issue of fully protected species. Resources Agency Secretary Mary Nichols, testifying before the

Committee, identified the following problems with the current fully protected species law:

1)Fully protected status conflicts with recovery efforts because



there is no allowance for management pursuant to a recovery effort. For example, the fully protected species statute is in direct conflict with regional, multi-species conservation planning, such as the Natural Community Conservation Planning Program.

2)Fully protected status does not allow for incidental take of species due to otherwise lawful activities.

3)The law does not provide for mitigation of fully protected species. Because mitigation is not an option, the Department's only recourse is to initiate legal proceedings to address conflicts with fully protected species.

The bill also specifies the number and makeup of the advisory committee that the Secretary of Resources is required to consult with throughout all stages of the Salton Sea alternative selection process. The requirement that an advisory committee be appointed was contained in SB 482. Further, the bill substitutes an unspecified date for the June 30, 2003 due date for a report on economic impacts related to the use of land fallowing in the Imperial Valley in connection with the QSA. This provision is in conflict with AB 1770 (Water, Parks & Wildlife Committee) which proposes to extend the due date for that report to January 30, 2005.

REGISTERED SUPPORT / OPPOSITION :

Support

Boyle Engineering Corporation
California Building Industry Association
California Waterfowl
M.J. Schiff and Associates, Inc.
Richard Brady & Associates
Santa Clara Valley Water District
Valley Center Municipal Water District

Opposition

None on File.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

BILL ANALYSIS

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 317

THIRD READING

Bill No: SB 317
Author: Kuehl (D)
Amended: 6/2/03
Vote: 21

SENATE NATURAL RES. & WILD. COMMITTEE : 8-0, 4/8/03
AYES: Kuehl, Oller, Alpert, Bowen, Denham, Ortiz, Sher, Torlakson

SENATE APPROPRIATIONS COMMITTEE : 12-1, 5/29/03
AYES: Alpert, Battin, Ashburn, Bowen, Burton, Escutia, Johnson, Karnette, Machado, Murray, Poochigian, Speier
NOES: Aanestad

SUBJECT : Salton Sea

SOURCE : Author

DIGEST : This bill allows specific provisions in SB 482 (Kuehl), Chapter 617, Statutes of 2002, relating to the Salton Sea and a Quantification Settlement Agreement to become operative.

Specifically, this bill waives the fully protected species statutes on a limited, local basis in order to (1) accommodate a southern California water transfer (as part of the Quantification Settlement Agreement), and (2) establishes a framework for considering the restoration of the Salton Sea.

ANALYSIS : SB 482 declares the intent of the Legislature

CONTINUED



to allocate $50 million from Proposition 50 for habitat preservation activities at the Salton Sea or the Lower Colorado River.

This bill makes the following technical changes to SB 482:

1. Certain subdivisions of SB 482 depended on the execution of the Quantification Settlement Agreement (QSA) on or before December 31, 2002 before becoming operative. This bill removes this date from the statute and leaves the new date blank.

2. The bill removes the stipulation on passage of Proposition 50 from the statute since the voters approved this measure on November 5, 2002.

3. The bill amends Section 9 of SB 482 by removing the June 30, 2003 reporting date for the items set forth in that section and leaves the date blank.

The bill, as recently amended, also limits the membership of the advisory committee to 11 members, as follows: Five shall represent affected local governments or affected water or irrigation districts. Two shall represent the Salton Sea Authority. Three shall represent regional or state conservation groups with a demonstrated interest in the ecosystem of the Salton Sea. One Native American shall represent tribal interests.

NOTE: According to the author's office, this measure is substantially identical to SB 482 (Kuehl) which passed the Legislature last year by a vote of 77-0 in the Assembly and 34-1 in the Senate. Last year's bill was contingent on signing of the QSA by the affected water agencies by the end of 2002. That did not happen, and, except for the on going commitment of $50 million toward Salton Sea restoration, the bill's provisions were rendered inoperative. An intensive effort to resolve any remaining issues is currently underway and all parties are in apparent agreement that re-implementation of SB 482, as SB 317, is essential to the prospects of the water transfer and the restoration of the Salton Sea.

Comments



Colorado River Water Transfer

SB 482 declared legislative intent to allocate $50 million from Proposition 50 for restoration or habitat preservation activities at the Salton Sea or the Lower Colorado River, or to develop a natural community conservation plan that is consistent with the initiative and is implemented to effectuate the QSA (a comprehensive agreement among various entities related to Colorado River water usage).

SB 482 acknowledges that the water transfer could adversely affect the Sea, however, the intent is to conduct the transfer with as little impact on salinity levels as possible. The most likely mitigation measure would result in some agricultural land remaining fallow and water that otherwise would have been used for irrigation would be channeled to the Salton Sea.

SB 482 also provides the Imperial Irrigation District (IID) with assurances related to the rights to water conserved by land fallowing contingent upon execution of the QSA by December 31, 2002. This bill removes this date and leaves the date blank.

The IID would be required to consult with the Imperial County Board of Supervisors before implementing land-fallowing practices in order to avoid or mitigate unreasonable economic or environmental impacts in the county. If IID utilizes land fallowing conservation measure and is meeting its water delivery obligation under the QSA , no person or local agency would be able to seek additional conserved Colorado River water from the district unless the district adopts a resolution making the water available.

SB 482 requires the Resources Agency and the Technology, Trade and Commerce Agency to report to the Governor and the Legislature by June 30, 2003 on the economic impacts attributable to land fallowing pursuant to the QSA and whether funds provided to the IID for water transferred under the QSA would mitigate those impacts. This bill

removes the June 30th date from the statutes and leaves the date blank. If it is determined that additional funds are



required, the report would include recommendations on providing funds from the state and other sources and the establishment of a program to administer those funds.

Fully Protected Species

Current statutes prohibit the taking of specified fully protected species for any reason other than scientific research or protection of livestock authorized by the Fish and Game Commission. There are currently 37 species of birds, mammals, fish, reptiles, and amphibians covered the law.

SB 482 authorized the State Department of Fish and Game (DFG) to permit the taking of fully protected species resulting from specified impacts on certain areas, canals and rivers as a result of implementation of the QSA. The following conditions would have to be met to authorize the taking of a fully protected species:

1. The QSA is executed by the appropriate parties on or before December 31, 2002. This bill removes the date and leaves it blank.

2. DFG determines, upon consultation with the State Department of Water Resources, that the QSA will not result in an increase in projected salinity levels of the Salton Sea within 15 years and the QSA does not preclude alternatives for reclamation of the Salton Sea as outlined in the Salton Sea Reclamation Act of 1998. This requirement would remain in place until DFG finds that increases in salinity will no longer adversely affect fish eating birds at the Salton Sea or a reclamation plan has been funded and implemented that eliminates the need for the IID to mitigate impacts on fish eating birds.

3. Provisions in existing law for incidental take of endangered or threatened species have been satisfied.

4. The authorization provides for development and implementation of an adaptive management process designed to monitor measures to fully mitigate the effects of the taking.



5. The authorization provides for development and implementation of an adaptive management plan that contributes to the long term conservation of the species. DFG would be required to develop this plan contingent on funds provided by Proposition 50 or other funds appropriated by the Legislature for this purpose.

The Secretary of the Resources Agency is required to invoke all existing authority to enter into a memorandum of understanding (MOU) between the Secretary of the Interior, the Salton Sea Authority and the Governor pursuant to the Act to develop alternatives for projects that realize

objectives of the act. SB 482 specified required criteria for the MOU. The secretary would also be required to establish an advisory committee representing parties interested in the future of the Salton Sea.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

According to Senate Appropriations Committee:

| Major Provisions | 2003-04 | 2004-05 | 2005-06 | Fund |
|---|---|---|---|---|
| Adaptive Mngt. Program/ Implementation | Unknown, but in excess of $2,500+ | | | BF*/GF |
| Develop MOU | $50 | $50 | | BF*/GF |
| MOU Implementation | Unknown, potentially significant | | | BF*/GF |
| Advisory Committee | $5 | $5 | | BF*/GF |
| RA Staff | | $100 | $100 | BF*/GF |
| QSA Report | $110 | | | BF*/GF |

+Minimum costs for first five years or a 15-20 year project.
*Proposition 50.



SUPPORT : (Verified 6/2/03)

Imperial Irrigation District
San Diego County Water Authority
Coachella Valley Water District
Metropolitan Water District
Planning and Conservation League
California Audubon

CP:sl 6/2/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

Appropriations Committee Fiscal Summary
317 (Kuehl)

Hearing Date: 05/29/03 Amended: AI+RN312842
Consultant: Miriam Barcellona Ingenito Policy Vote: NR&W 8-0

BILL SUMMARY: As proposed to be amended, SB 317 would waive the fully protected species statutes on a limited, local basis in order to (1) accommodate a southern California water transfer (as part of the Quantification Settlement Agreement [QSA]), and (2) establish a framework for considering the restoration of the Salton Sea.

Fiscal Impact (in thousands)

| Major Provisions | 2003-04 | 2004-05 | 2005-06 | Fund |
|---|---|---|---|---|
| Adaptive Mngt. Prog./Implementation | Unknown, but in excess of $2,500+ | | | BF*/GF |
| Develop MOU | $50 | $50 | | BF*/GF |
| MOU Implementation | Unknown, potentially significant | | | BF*/GF |
| Advisory Committee | $5 | $5 | | BF*/GF |
| RA Staff | $100 | $100 | | BF*/GF |

| | |
|---|---|
| QSA Report | $ 110 BF*/GF |

+Minimum costs for first five years or a 15-20 year project.
*Proposition 50
STAFF COMMENTS: Suspense FILE

SB 317 states that the Legislature intents to allocate $50 million from Proposition 50 as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources, to assist in the implementation of the preferred alternative or other related restoration activities that are implemented to effectuate the QSA.

SB 317 would authorize the Dept. of Fish and Game (DFG) to authorize the taking of a fully protected species specified conditions are met. DFG would be required to develop and implement an adaptive management program for the Salton Sea. Because of the large number of unknown factors associated with the development and implementation of an adaptive management program, costs to DFG are unknown, but significant. There are at least 27 species that are either state-listed or fully protected, but there could be potentially up to 96 species included in the program if a natural community conservation plan is prepared. Adaptive management plans are generally long-term projects to implement (15-20 years). DFG assumes that Proposition 50 funding will be entirely appropriated within five years, leaving 10 to 15 years of this program unfunded. DFG estimates that with $2.5 million (and 4 positions) it could get through the first five years of the project if there were only 27 species. DFG would only be required to develop and implement the adaptive management program if there are funds made available from Proposition 50 or by other funds appropriated by the Legislature or approved by the voters for that purpose.

SB 317 would require the Resources Agency (RA) (via a MOU with specified entities) to develop, select, and implement alternatives for projects that realize the objectives of the Salton Sea Reclamation Act of 1998. RA indicates that it would require an additional full-time position ($100,000) to prepare alternatives that may be considered. The cost to implement those activities cannot be known until the MOU is completed, but could be significant. RA would be required to establish an advisory committee on the Salton Sea. SB 317 would establish an 11 member advisory committee and would authorize RA to pay per diem for travel and lodging for up to 5 members. Costs would be about $10,000. SB 317 would require the RA and the Technology, Trade and Commerce Agency (TTCA), among others, to provide the Governor and the Legislature a report on impacts of implementing the QSA . Costs would likely be around $110,000.

BILL ANALYSIS

Appropriations Committee Fiscal Summary
317 (Kuehl)

Hearing Date: 4/28/03 Amended: AI
Consultant: Miriam Barcellona Ingenito Policy Vote: NR&W 8-0

BILL SUMMARY: SB 317 would waive the fully protected species statutes on a limited, local basis in order to (1) accommodate a southern California water transfer (as part of the Quantification Settlement Agreement [QSA]), and (2) establish a framework for considering the restoration of the Salton Sea.

| Fiscal Impact (in thousands) | | | |
|---|---|---|---|
| Major Provisions | 2003-04 | 2004-05 | 2005-06 |
| Adaptive Mngt. Prog./Implementation | Fund | Unknown, but in excess of $2,500+ | |
| Develop MOU | BF*/GF $50 | $50 | |
| MOU Implementation | BF*/GF | Unknown, potentially significant | |
| Advisory Committee | BF*/GF $5 | $5 | |
| QSA Report | BF*/GF $ 110 | | |

+Minimum costs for first five years or a 15-20 year project.

*Proposition 50
STAFF COMMENTS: This bill meets the criteria for referral to the Suspense file. SB 317 states that the Legislature intents to allocate $50 million from Proposition 50 as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources, to assist in the implementation of the preferred alternative or other related restoration activities that are implemented to effectuate the QSA.

SB 317 would authorize the Dept. of Fish and Game (DFG) to authorize the taking of a fully protected species specified conditions are met. DFG would be required to develop and implement an adaptive management program for the Salton Sea. Because of the large number of unknown factors associated with the development and implementation of an adaptive management program, costs to DFG are unknown, but significant. There are at least 27 species that are either state-listed or fully protected, but there could potentially up to 96 species included in the program if a natural community conservation plan is prepared. Adaptive management plans are generally long-term projects to implement (15-20 years). DFG assumes that Proposition 50 funding will be entirely appropriated within five years, leaving 10 to 15 years of this program unfunded. DFG estimates that with $2.5 million (and 4 positions) they could get through the first five years of the project if there were only 27 species. DFG would only be required to develop and implement the adaptive management program if there are funds made available from Proposition 50 or by other funds appropriated by the Legislature or approved by the voters for that purpose.

SB 317 would require the Resources Agency (RA) (via a MOU with specified entities) to develop, select, and implement alternatives for projects that realize the objectives of the Salton Sea Reclamation Act of 1998. RA indicates that they would require an additional full-time position ($100) to prepare alternatives that may be considered. The cost to implement those activities cannot be known until the MOU is completed, but could be significant. RA would be required to establish an advisory committee on the Salton Sea. SB 317 is silent on the size of the committee, how often it should meet, and whether the members would be eligible for compensation, per diem, and travel expenditures; STAFF RECOMMENDS clarifying this in the bill. RA assumes that the committee would be 15 members and only 5 would require state compensation for travel and lodging. If there were only 6 meetings in the year and 5 members requiring travel and lodging compensation only, costs would be about $10,000. SB 317 would require the RA and the Technology, Trade and Commerce Agency (TTCA), among others, to provide the Governor and the Legislature a report on impacts of implementing the QSA . Costs would likely be around $110,000.

BILL ANALYSIS
1

SENATE NATURAL RESOURCES AND WILDLIFE BILL NO:SB 317
Senator Sheila Kuehl, Chair AUTHOR:Kuehl
VERSION: As Introduced
FISCAL: yes
URGENCY:no
CONSULTANT:Bill Craven
HEARING DATE:04-08-03

SUBJECT : Salton Sea

ISSUE : Shall the Legislature waive the fully protected species statutes on a limited, local basis in order to accommodate a southern California water transfer while also establishing a framework for considering restoration of the Salton Sea?

EXISTING LAW : California has four fully protected species statutes. One protects designated birds, one protects designated mammals, one protects designated reptiles and amphibians, and one protects designated fish. A total of 37 species are listed. These statutes do not allow the Department of Fish and Game to authorize the "incidental take" of these species for any purpose.

A proposed water transfer will affect the habitat and food supply of a fully protected species, the brown pelican. Since no "take" of pelicans is allowable, the transfer cannot occur unless acceptable relief from the fully protected species statutes is obtained.

California has no laws that propose restoration of the Salton Sea.

SUMMARY : This bill modifies endangered species laws, and authorizes a limited waiver of fully-protected species provisions in order to establish a process for more effectively maintaining habitat at the Salton Sea, while still allowing water transfers to occur between the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA). This bill provides one element necessary for compliance with the Colorado River Plan, an agreement that, among other things, reduces southern California's use of water from the Colorado River.

PROPOSED LAW : The bill declares that it is important for California to honor its commitment to reduce Colorado River water use, that the Quantification Settlement Agreement (QSA) be executed by a date certain, declares the necessity of a water transfer from Imperial Irrigation District to San Diego, and contains other related declarations pertaining to the important habitat values in and around the Salton Sea. The bill also declares an intention to allocate $50 million from Proposition 50 to Salton Sea restoration or related habitat preservation activities at the Salton Sea.

In substantive provisions, the bill authorizes a limited repeal of the fully protected species statutes in order to allow the Department of Fish and Game to authorize the incidental take of, and require mitigation for, all fully protected, endangered, and threatened species in the area affected by the transfer.

Any such permit is conditioned on the following factors, all of which must be met: Execution of the QSA by a date certain, implementation of the QSA in a manner that does not increase the rate of salinisation of the Salton Sea for 15 years and that does not interfere with any restoration options at the Salton Sea, and full mitigation of the impacts of any incidental take of protected species that are covered by the permit through various mechanisms that include specific adaptive management components for altered biological circumstances.

The bill further provides an offramp to IID that ends its mitigation responsibilities prior to the 15 year period if the Salton Sea becomes hypersaline or if a restoration plan is funded and implemented.

The bill provides for a stakeholder process within the Resources Agency to evaluate restoration options at the Salton Sea and to make recommendations to the Legislature.

The bill also requires a joint agency study of possible third party impacts of the proposed water transfer in the Imperial Valley.

Additionally, the bill conclusively safeguards the existing water rights of IID for the duration of the QSA.

ARGUMENTS IN SUPPORT : None received.

ARGUMENTS IN OPPOSITION : None received.

STAFF COMMENTS : This measure is substantively identical to SB 482 (Kuehl) which passed the Legislature last year by a vote of 77-0 in the Assembly and 34-1 in the Senate. Last year's bill was contingent on signing of the QSA by the affected water agencies by the end of 2002. That did not happen, and, except for the on going commitment of $50 million toward Salton Sea restoration, the bill's provisions were rendered inoperative. An intensive effort to resolve any remaining issues is currently underway and all parties are in apparent agreement that re-implementation of SB 482, as SB 317, is essential to the prospects of the water transfer and the restoration of the Salton Sea.

Staff believes that all opposition to this bill was removed last year including that of Imperial Irrigation District which removed its opposition at the end of 2002.

SUPPORT : (based on testimony on SB 482)
Metropolitan Water District
Coachella Valley Water District
San Diego County Water Authority
City of San Diego
California Audubon
Planning and Conservation League

OPPOSITION : None

BILL ANALYSIS

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 654

UNFINISHED BUSINESS

Bill No: SB 654
Author: Machado, et al
Amended: 9/9/03
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SENATE AG. & WATER RESOURCES COMMITTEE : 8-1, 9/10/03
AYES: Machado, Alpert, Bowen, Ducheny, Florez, Hollingsworth, Kuehl, Torlakson
NOES: Denham
NO VOTE RECORDED: Aanestad, Margett, Perata, Poochigian

ASSEMBLY FLOOR : 79-0, 9/9/03 - See last page for vote

SUBJECT : Water supply planning

SOURCE : Author

DIGEST : Assembly Amendments delete the provisions relating to water management plans.

This bill is one of thee bills necessary to implement the Colorado River Quanitification Settlement Agreement. This bill, among other things, authorizes the State Department of Fish and Game to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

ANALYSIS :

CONTINUED



This bill:

1. Extends the date by which the lining of the All-American Canal and the Coachella Branch of the All-American Canal is to be completed to December 31, 2008, or such later date as may be required by extraordinary circumstances.

2. Makes a legislative finding that the extension of the date for completing the canal project linings, from December 31, 2006 to December 31, 2008, is required as there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications, and that these circumstances are extraordinary.

3. Makes technical corrections to Section 1 of Chapter 617

of the Statutes of 2002.

4. Makes a finding that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan that it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Colorado River Quantification Settlement Agreement (QSA).

5. Authorizes the State Department of Fish and Game (DFG), notwithstanding any other provision of law, to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

6. Specifies that the Director of DFG or his or her designee shall chair the authority created by the joint powers agreement.

7. Provides that the joint powers agreement shall include the following agencies:

   A. Coachella Valley Water District (CVWD)

   B. Imperial Irrigation District (IID)



   C. San Diego County Water Authority (SDCWA)

8. Specifies that the costs for environmental mitigation requirements shall be allocated based on the agreement among IID, the CVWD, the SDCWA and DFG, as follows:

   A. Costs up to and not to exceed $133 million, adjusted for inflation, to be paid by IID, CVWD, and SDCWA for environmental mitigation requirements.

   B. $30 million, adjusted for inflation, to be paid by IID, CVWD, and the SDCWA to the Salton Sea Restoration Fund (Fund).

9. Provides that, except as specified, no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea will be required of IID, CVWD, Metropolitan Water District of Southern California (MWD), and SDCWA, including federal cost-sharing or other federal requirements. States that any future state actions to restore the Salton Sea will be the sole responsibility of the state.

10. Defines, for purposes of the bill, "environmental mitigation requirements" to mean any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the IID Water Conservation and Transfer Project, certified by the IID on June 28, 2002, as modified and supplemented by the Addendum thereto prepared to assess subsequent revisions to the QSA, but excluding measures required to address environmental impacts:

   A. Within the service areas of the CVWD (other than impacts related to the Salton Sea), the SDCWA, and MWD.

   B. Associated with the All-American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.

11.Defines "environmental review process" to mean any of



the following:

A. The conducting of any required environmental review or assessment, or both.

B. The obtaining of any permit, authorization, opinion, assessment or agreement.

C. The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water Code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

12.Specifies that "environmental review process" does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

13.Specifies that this bill shall become operative only if SB 277 (Ducheny) and SB 317 (Kuehl) of the 2003-04 Regular Session are both chaptered and become effective on or before January 1, 2004.

Comments

This bill is one of three bills necessary to implement the QSA. Enacement of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 317 (Kuehl). These three bills represent a negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.

The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the state's annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

Complicating the already complex discussions was the issue



of environmental mitigation for impacts to the Salton Sea. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the

nation, will greatly impact the fish-eating birds that currently flock to the Salton Sea which is a vital link in the Pacific Flyway.

This bill provides a mechanism, in the form of a joint powers agreement (JPA) chaired by the Director of DFG to allocate and implement required environmental mitigation. The JPA will include CVWD, IID, and SDCWA. The bill specifies how the cost for environmental mitigation shall be allocated between the agencies and the state. It is estimated that the various sources of funding for the Fund will generate up to $300 million for the restoration program. Further, the bill specifies that except as otherwise provided for, no further funding obligation or in-kind contributions of any kind for restoration of the Salton Sea will be required of the three agencies and MWD. Any future state actions to restore the Salton Sea will be the sole responsibility of the state.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California will be entitled to receive 200,000-acre fee of surplus water. Over the 75 years life of the QSA, more than 30 million-acre feet of water will be removed from primarily agricultural uses to primarily urban



uses.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

SUPPORT : (Verified 9/10/03)

Audubon Society - California
Coachella Valley Water District
Defenders of Wildlife
Imperial Irrigation District
Metropolitan Water District of Southern California
Planning and Conservation League
San Diego County Water Authority
State Water Contractors

ASSEMBLY FLOOR :
AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, Yee, Wesson

TSM:cm 9/11/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

| | |
|---|---|
| SENATE RULES COMMITTEE<br>Office of Senate Floor Analyses<br>1020 N Street, Suite 524<br>(916) 445-6614 Fax: (916)<br>327-4478 | SB 654 |

UNFINISHED BUSINESS

Bill No: SB 654
Author: Machado, et al
Amended: 9/9/03
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR : 79-0, 9/9/03 - See last page for vote

SUBJECT : Water supply planning

SOURCE : Author

DIGEST : Assembly Amendments delete the provisions relating to water management plans.

This bill is one of thee bills necessary to implement the Colorado River Quanitification Settlement Agreement. This bill, among other things, authorizes the State Department of Fish and Game to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

ANALYSIS :

This bill:

1. Extends the date by which the lining of the All-American Canal and the Coachella Branch of the All-American Canal is to be completed to December 31, 2008, or such later date as may be required by extraordinary circumstances.

CONTINUED



2. Makes a legislative finding that the extension of the date for completing the canal project linings, from December 31, 2006 to December 31, 2008, is required as there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications, and that these circumstances are extraordinary.

3. Makes technical corrections to Section 1 of Chapter 617 of the Statutes of 2002.

4. Makes a finding that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan that it is necessary to provide a mechanism to implement and allocate

environmental mitigation responsibility between water agencies and the state for the implementation of the Colorado River Quantification Settlement Agreement (QSA).

5. Authorizes the State Department of Fish and Game (DFG), notwithstanding any other provision of law, to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

6. Specifies that the Director of DFG or his or her designee shall chair the authority created by the joint powers agreement.

7. Provides that the joint powers agreement shall include the following agencies:

   A. Coachella Valley Water District (CVWD)

   B. Imperial Irrigation District (IID)

   C. San Diego County Water Authority (SDCWA)

8. Specifies that the costs for environmental mitigation requirements shall be allocated based on the agreement among IID, the CVWD, the SDCWA and DFG, as follows:



   A. Costs up to and not to exceed $133 million, adjusted for inflation, to be paid by IID, CVWD, and SDCWA for environmental mitigation requirements.

   B. $30 million, adjusted for inflation, to be paid by IID, CVWD, and the SDCWA to the Salton Sea Restoration Fund (Fund).

9. Provides that, except as specified, no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea will be required of IID, CVWD, Metropolitan Water District of Southern California (MWD), and SDCWA, including federal cost-sharing or other federal requirements. States that any future state actions to restore the Salton Sea will be the sole responsibility of the state.

10. Defines, for purposes of the bill, "environmental mitigation requirements" to mean any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the IID Water Conservation and Transfer Project, certified by the IID on June 28, 2002, as modified and supplemented by the Addendum thereto prepared to assess subsequent revisions to the QSA, but excluding measures required to address environmental impacts:

   A. Within the service areas of the CVWD (other than impacts related to the Salton Sea), the SDCWA, and MWD.

   B. Associated with the All-American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.

11. Defines "environmental review process" to mean any of the following:

   A. The conducting of any required environmental review or assessment, or both.

B. The obtaining of any permit, authorization,



opinion, assessment or agreement.

C. The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water Code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

12. Specifies that "environmental review process" does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

13. Specifies that this bill shall become operative only if SB 277 (Ducheny) and SB 317 (Kuehl) of the 2003-04 Regular Session are both chaptered and become effective on or before January 1, 2004.

Comments

This bill is one of three bills necessary to implement the QSA. Enacement of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 317 (Kuehl). These three bills represent a negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.

The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the state's annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

Complicating the already complex discussions was the issue of environmental mitigation for impacts to the Salton Sea. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about



the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the nation, will greatly impact the fish-eating birds that currently flock to the Salton Sea which is a vital link in the Pacific Flyway.

This bill provides a mechanism, in the form of a joint powers agreement (JPA) chaired by the Director of DFG to

allocate and implement required environmental mitigation. The JPA will include CVWD, IID, and SDCWA. The bill specifies how the cost for environmental mitigation shall be allocated between the agencies and the state. It is estimated that the various sources of funding for the Fund will generate up to $300 million for the restoration program. Further, the bill specifies that except as otherwise provided for, no further funding obligation or in-kind contributions of any kind for restoration of the Salton Sea will be required of the three agencies and MWD. Any future state actions to restore the Salton Sea will be the sole responsibility of the state.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California will be entitled to receive 200,000-acre fee of surplus water. Over the 75 years life of the QSA, more than 30 million-acre feet of water will be removed from primarily agricultural uses to primarily urban uses.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: No

ASSEMBLY FLOOR :



AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Nunez, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wiggins, Wolk, Wyland, Yee, Wesson

TSM:cm 9/10/03 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS

SENATE AGRICULTURE & WATER RESOURCES COMMITTEE
Senator Michael J. Machado, Chair

BILL NO: SB 654 HEARING: 9/10/03
AUTHOR: Machado FISCAL: Yes
VERSION: 9/9/03 CONSULTANT: Dennis O'Connor

Water: Salton Sea: Colorado River.

BACKGROUND AND EXISTING LAW

This bill is one of three bills necessary to implement the QSA. The other bills are SB 277 (Ducheny) and SB 317 (Kuehl). The three bills are contingent upon enactment of each of the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. The bills are also contingent on execution of the QSA by October 12, 2003.

Background

The 1928 Boulder Canyon Project Act, among other things, apportioned the lower basin's 7.5 million acre-feet (maf) of water from the Colorado River among the states of Arizona (2.8 maf), California (4.4 maf) and Nevada (0.3 maf).

For many years, California has been using significantly more water than the 4.4 maf allotment. Some years California's water use reached 5.2 maf. Before 1996, this was not a serious problem. Since the other lower basin states were not fully using all of their Colorado River water, the Secretary of Interior allowed California to make use of those unused apportionments. However, as the other lower basin states began using more and more of their apportionments, it became apparent that California was going to have to develop a strategy to live within its 4.4 maf allotment.

In 1996, then Secretary of Interior Bruce Babbitt made it clear that California could not continue to use more than its 4.4 maf allotment, and required California to reduce its Colorado River use. However, developing and implementing such a plan proved difficult. Progress was made in fits and starts towards resolving many of the early issues:

- San Diego County Water Authority (SDCWA) and IID reached initial terms for a conservation based water transfer.
- San Diego and MWD reached a preliminary agreement on how to move the water from IID to San Diego.
- IID, CVWD, and MWD agreed on key terms for a quantification



settlement agreement. Two important aspects of the key terms were:

1. Resolving long-standing conflicts between CVWD and IID over their relative rights to Colorado River water, and
2. CVWA and MWD agreed to put aside for 75 years a long-standing dispute over beneficial use by IID.

However, as old issues moved towards resolution, new issues emerged. Two particularly challenging issues were:

- Salton Sea - a conservation based transfer would reduce agricultural drainage into the sea, thereby hastening the day the sea would become hypersaline and no longer capable of supporting an active fishery.
- Economic Impacts - shifting from a conservation based transfer to a fallowing based transfer potentially could effect the local economy negatively.

To help provide a soft landing to California as it moved from

5.2 maf to 4.4 maf, the Secretary of Interior agreed to implement Interim Surplus Guidelines for 15 years. These guidelines provide for delivery of surplus water from the Colorado River to California, Nevada, and Arizona. The Secretary conditioned implementing the Interim Surplus Guidelines to signing a final QSA by December 31, 2002. MWD, CVWD, and IID were to be the three key parties to the QSA.

On December 31, 2002, the clock ran out for California. Time expired, and instead of allowing California to ramp down its use of Colorado River water over 15 years, Secretary of Interior Gale Norton ordered an immediate reduction of water to the agencies.

The fall out was severe. Among other things, IID sued the Secretary, challenging her right to reduce their contract deliveries in a way IID alleged was outside of her authority.

Amidst all this, Governor Davis convened months of closed-door meetings with a state negotiating team and representatives from four Southern California water agencies to reach an agreement. After much work, the result is the proposed QSA.

The QSA is an agreement between IID, the Metropolitan Water District of Southern California, the San Diego County Water Authority (SDCWA), the Coachella Valley Water District, and the State of California. It settles a number of claims to the waters of the Colorado River. It also provides California a



transition period to implement water transfers and supply programs that will reduce California's overdependence upon the Colorado River and reduce the state's draw to its 4.4 maf basic annual apportionment. The QSA commits the state to a restoration path for the environmentally sensitive Salton Sea as well as provides full mitigation for these water supply programs.

Major features of the QSA include:

- Initial term of 45 years and a renewal term of 30 years by mutual consent;
- Quantification of IID's Colorado River entitlement at 3.1 million acre-feet;
- Quantification of CVWD's Colorado River entitlement at 330,000 acre-feet;
- The state commits to a restoration path for Salton Sea by providing $20 million this year to fund the development of a restoration plan by 2006;
- An innovative restoration funding program for the Salton Sea would be implemented, under which the state of California would purchase up to 1.6 million acre-feet of water from IID for sale to MWD. This financing plan is estimated to generate up to $300 million for the restoration program.
- A peace treaty between the four water agencies and the promise for lasting peace among the seven states that share the Colorado River; and
- Water transfers:
  - IID-MWD transfer of up to 110,000 acre-feet per year from IID to MWD;
  - IID-SDCWA transfer, ramping up to 200,000 acre-feet per year from IID to the SDCWA;
  - IID-CVWD transfers ramping up to 103,000 acre-feet per year from IID to CVWD;
  - Potential water transfers between 25,000 and 111,000 acre-feet annually from the Palo Verde Irrigation District to MWD;
  - Lining of the All-American and Coachella canals, with the 78,000 acre-feet of water produced annually going to either MWD or SDCWA; and
  - 16,000 acre-feet per year of additional canal-lining water provided to the San Luis Rey Settlement Parties to implement a 1988 federal law that resolved decades-old litigation over Indian water rights.

Current Law



As part of an earlier attempt in 1998 to resolve the QSA, the legislature appropriated by statute $200 million to the Department of Water Resources to fund the lining of the All American and Coachella Canals. The Metropolitan Water District is to receive the water conserved by the lining of the canals. The statute specifies that the canal lining projects shall be completed not later than December 31, 2006, or such later date as may be required by extraordinary circumstances.

Last year, the Legislature passed and the Governor signed SB 482 (Kuehl) (Ch. 617, Stat. 2002). Among other things, that bill stated Legislative intent to allocate $50 million from Proposition 50 to:

- Assist in the implementation of the preferred alternative or other related restoration activities at the Salton Sea or the lower Colorado River, or
- Assist in the development of a natural community conservation plan (NCCP) that is consistent with the Proposition 50 and that is implemented to effectuate the QSA.

PROPOSED LAW

This bill does three main things:

Section 1 extends the date for completion of the canal linings from December 31 2006 to December 31, 2008, finds that there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications for lining the All American Canal and the Coachella Branch of the All American Canal, and that these circumstances are extraordinary.

Section 2 adds to the list of intended uses of the $50 million provided by Proposition 50 the preparation of the Salton Sea restoration study.

Section 3 creates a joint powers authority to provide for the payment of costs for environmental mitigation requirements associated with the IID/SDCWA transfer. Director of the Department of Fish and Game or his or her designee shall chair the authority. The joint powers agreement shall include the following agencies:

- Coachella Valley Water District.
- Imperial Irrigation District.
- San Diego County Water Authority

Costs for environmental mitigation requirements shall be



allocated based on an agreement among IID, CVWD, SDCWA, and shall include the following:

- Costs up to but not to exceed $133 million to be paid by shall be paid by IID, CVWD, SDCWA for environmental mitigation requirements. The amount of the obligation shall be adjusted for inflation.
- $30 million shall be paid by IID, CVWD, and SDCWA to the Salton Sea Restoration Fund as provided in Section 1 of SB 317. This amount shall be adjusted for inflation.

Except as required by the 3 QSA bills (SB 277, SB 654 and this bill), no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea shall be required of IID, CVWD, SDCWA and MWD, including federal cost-sharing or other federal requirements. Any future state actions to restore

the Salton Sea will be the sole responsibility of the State of California.

COMMENTS

1. Beneficiaries Pays. The QSA adheres to the beneficiaries pay principle and no state funds would be used for QSA environmental mitigation. This bill, in creating the joint powers authority, codifies the financial relationships that ensure beneficiaries pay. Moreover, there is no longer any Proposition 50 funding requested for the mitigation programs included in the QSA.

2. Critical for QSA. This bill contains three critical elements necessary to QSA implementation. Failure to make the changes reflected in this bill could jeopardize ratification of the QSA by one or more of the parties to the QSA.

3. Will Everything Come Together This Time? The history of the QSA has been that periodically, the affected parties announce that they had reached agreement on terms, the Legislature takes action to make the necessary changes in law, and then for one reason or another the agreement falls apart at the last minute. While by all appearances, the outcome will be different this time, there are no guarantees. Consequently, the three QSA bills are contingent upon enactment of each of the others, so that none of the bills will become operative unless both the other bills become operative by January 1, 2004. More important, the principle benefits to the QSA parties of these three bills are contingent on execution of the QSA by October 12, 2003. October 12, 2003 is also the



constitutional deadline for the Governor to sign or veto bills passed this year.

PRIOR RELEVANT ACTIONS

Assembly Water, Parks, and Wildlife19-0
Assembly Floor 79-0

SUPPORT

Audubon Society - California
Coachella Valley Water District
Defenders of Wildlife
Imperial Irrigation District
Metropolitan Water District of Southern California
Planning and Conservation League
San Diego County Water Authority
State Water Contractors

OPPOSITION

None received

BILL ANALYSIS



(Without Reference to File)

SENATE THIRD READING
SB 654 (Machado)
As Amended September 9, 2003
Majority vote

SENATE VOTE :Vote not relevant

WATER, PARKS & WILDLIFE 19-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | | |

SUMMARY : Authorizes the Department of Fish and Game (DFG) to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements. Specifically, this bill :

1)Extends the date by which the lining of the All-American Canal and the Coachella Branch of the All-American Canal is to be completed to December 31, 2008, or such later date as may be required by extraordinary circumstances.

2)Makes a legislative finding that the extension of the date for completing the canal project linings, from December 31, 2006 to December 31, 2008, is required as there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications, and that these circumstances are extraordinary.

3)Makes technical corrections to Section 1 of Chapter 617 of the Statutes of 2002.

4)Makes a finding that in order to resolve conflicts that have prevented the implementation of California's Colorado River



Water Use Plan that it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement (QSA).

5)Authorizes DFG notwithstanding any other provision of law, to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

6)Specifies that the Director of DFG or his or her designee shall chair the authority created by the joint powers agreement.

7)Provides that the joint powers agreement shall include the following agencies:

a) Coachella Valley Water District (CVWD);
b) Imperial Irrigation District (IID); and,
c) San Diego County Water Authority (SDCWA).

8)Specifies that the costs for environmental mitigation requirements shall be allocated based on an agreement among IID, the CVWD, the SDCWA and DFG, as follows:

a) Costs up to and not to exceed $133 million, adjusted for inflation, to be paid by IID, CVWD, and SDCWA for environmental mitigation requirements; and,
b) $30 million, adjusted for inflation, to be paid by IID, CVWD, and the SDCWA to the Salton Sea Restoration Fund (Fund).

9)Provides that, except as specified, no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea will be required of IID, CVWD, Metropolitan Water District of Southern California (MWD), and SDCWA, including federal cost-sharing or other federal requirements. States that any future state actions to restore the Salton Sea will be the sole responsibility of the State.

10)Defines for purposes of the bill "environmental mitigation requirements" to mean any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact



Report/Environmental Impact Statement for the IID Water Conservation and Transfer Project, certified by the IID on June 28, 2002, as modified and supplemented by the Addendum thereto prepared to assess subsequent revisions to the QSA, but excluding measures required to address environmental impacts:

a) Within the service areas of the CVWD (other than impacts related to the Salton Sea), the SDCWA, and MWD, and;
b) Associated with the All-American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.

11)Defines "environmental review process" to mean any of the following:

a) The conducting of any required environmental review or assessment, or both;
b) The obtaining of any permit, authorization, opinion, assessment or agreement; or,
c) The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

12)Specifies that "environmental review process" does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

13)Specifies that this bill shall become operative only if SB 277 and SB 317 of the 2002-04 Regular Session are both chaptered and become effective on or before January 1, 2004.

FISCAL EFFECT : Unknown

COMMENTS : This bill is one of three bills necessary to implement the QSA. Enactment of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 317 (Kuehl). These



three bills represent a negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.

The execution of the QSA is key to the implementation of the California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

Complicating the already complex discussions was the issue of environmental mitigation for impacts to the Salton Sea. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the nation, would greatly impact the fish-eating birds that currently flock to the Salton Sea which is a vital link in the Pacific Flyway.

This bill provides a mechanism, in the form of a joint powers agreement (JPA) chaired by the Director of DFG to allocate and implement required environmental mitigation. The JPA will include CVWD, IID, and SDCWA. The bill specifies how the cost for environmental mitigation shall be allocated between the agencies and the State. It is estimated that the various sources of funding for the Fund will generate up to $300 million for the restoration program. Further, the bill specifies that except as otherwise provided for, no further funding obligation or in-kind contributions of any kind for restoration of the Salton Sea will be required of the three agencies and MWD. Any future state actions to restore the Salton Sea will be the sole responsibility of the State.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus



water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000-acre feet of surplus water. Over the 75 years life of the QSA more than 30 million-acre feet of water will be moved from primarily agricultural uses to primarily urban uses.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

FN: 0003964

BILL ANALYSIS



Date of Hearing: September 5, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 654 (Machado) - As Amended: September 5, 2003

SENATE VOTE : Not Relevant

SUBJECT : Quantification Settlement Agreement (QSA) Joint Powers Agreement.

SUMMARY : Authorizes the Department of Fish and Game (DFG) to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements. Specifically, this bill :

1)Extends the date by which the lining of the All-American Canal and the Coachella Branch of the All-American Canal is to be completed to December 31, 2008, or such later date as may be required by extraordinary circumstances.

2)Makes a legislative finding that the extension of the date for completing the canal project linings, from December 31, 2006 to December 31, 2008, is required as there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications, and that these circumstances are extraordinary.

3)Makes technical corrections to Section 1 of Chapter 617 of the Statutes of 2002.

4)Makes a finding that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan that it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the QSA.

5)Authorizes DFG notwithstanding any other provision of law, to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements.

6)Specifies that the Director of DFG or his or her designee shall chair the authority created by the joint powers



agreement.

7)Provides that the joint powers agreement shall include the following agencies:

a) Coachella Valley Water District (CVWD);
b) Imperial Irrigation District (IID); and,
c) San Diego County Water Authority (SDCWA).

8)Specifies that the costs for environmental mitigation requirements shall be allocated based on an agreement among IID, the CVWD, the SDCWA and DFG, as follows:

a) Costs up to $133 million, adjusted for inflation, to be paid by IID, CVWD, and SDCWA for environmental mitigation requirements.

b) $30 million, adjusted for inflation, to be paid by IID, CVWD, and the SDCWA to the Salton Sea Restoration Fund.

9) Provides that, except as specified, no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea will be required of IID, CVWD, Metropolitan Water District of Southern California (MWD), and SDCWA, including federal cost-sharing or other federal requirements. States that any future state actions to restore the Salton Sea will be the sole responsibility of the State.

10) Defines for purposes of the bill "environmental mitigation requirements" to mean any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the IID Water Conservation and Transfer Project, certified by the IID on June 28, 2002, as modified and supplemented by the Addendum thereto prepared to assess subsequent revisions to the QSA, but excluding measures required to address environmental impacts:

a) Within the service areas of the CVWD (other than impacts related to the Salton Sea), the SDCWA, and MWD, and;
b) Associated with the All-American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.



11) Defines "environmental review process" to mean any of the following:

a) The conducting of any required environmental review or assessment, or both;
b) The obtaining of any permit, authorization, opinion, assessment or agreement; or,
c) The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

12) Specifies that "environmental review process" does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

13) Specifies that this bill shall become operative only if SB 277 and SB 317 of the 2002-04 Regular Session are both chaptered and become effective on or before January 1, 2004.

EXISTING LAW

Establishes a December 31, 2006 deadline for completion of the lining of the All-American Canal and the Coachella branch of the All-American Canal.

FISCAL EFFECT : Unknown.

COMMENTS :

This bill is one of three bills necessary to implement the QSA. Enactment of this bill is contingent upon the enactment of SB 277 (Ducheny) and SB 317 (Kuehl). These three bills represent a

negotiated agreement between the four impacted agencies, and the four agencies and various conservation and environmental groups.

The execution of the QSA is key to the implementation of the



California Colorado River Water Use Plan, the framework for reducing the states annual use of Colorado River water to its entitlement of 4.4 million acre-feet.

Complicating the already complex discussions was the issue of environmental mitigation for impacts to the Salton Sea. The majority of the inflow to the Salton Sea is agricultural runoff from the Imperial, Coachella, and Mexicali Valleys. The proposed transfer of water from agricultural to urban use, as part of the reduction of California's Colorado River use, has raised concerns about the decrease of inflow to the Salton Sea resulting in accelerated concentration of salts and nutrients.

The issue of Salton Sea salinity has become a major focus because it will eventually reach a level where it will interfere with fish reproduction. Loss of the fishery, which is considered the most productive fishery in the nation, would greatly impact the fish-eating birds that currently flock to the Salton Sea which is a vital link in the Pacific Flyway.

This bill provides a mechanism, in the form of a joint powers agreement (JPA) chaired by the Director of DFG to allocate and implement required environmental mitigation. The JPA will include CVWD, IID, and SDCWA. The bill specifies how the cost for environmental mitigation shall be allocated between the agencies and the State. It is estimated that the various sources of funding for the Salton Sea Restoration Fund will generate up to $300 million for the restoration program. Further, the bill specifies that except as otherwise provided for, no further funding obligation or in-kind contributions of any kind for restoration of the Salton Sea will be required of the three agencies and Metropolitan Water District of Southern California. Any future state actions to restore the Salton Sea will be the sole responsibility of the State.

The QSA will provide California up to 75 years of stability in its Colorado River water supplies. The initial term is 45 years with a renewal of 30 years by mutual consent. The QSA will provide for the quantification of IID's Colorado River entitlement at 3.1 million-acre feet, and CVWD's entitlement at 330,000-acre feet. It will also allow renewed access to surplus water, when available, under the federal Interim Surplus Guidelines. For 2004, urban Southern California would be entitled to receive 200,000-acre feet of surplus water. Over the 75 years life of the QSA more than 30 million-acre feet of



water will be moved from primarily agricultural uses to primarily urban uses.

REGISTERED SUPPORT / OPPOSITION :

Support

Coachella Valley Water District
Imperial Irrigation District
Metropolitan Water District of Southern California
San Diego County Water Authority

Opposition

None on File.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

BILL ANALYSIS



SENATE THIRD READING
SB 654 (Agriculture & Water Resources Committee)
As Amended July 6, 2003
2/3 vote. Urgency

SENATE VOTE :40-0

WATER, PARKS & WILDLIFE 20-0 LOCAL GOVERNMENT 9-0

| | | | |
|---|---|---|---|
| Ayes: | Canciamilla, Keene, Berg, Bermudez, Corbett, Daucher, Dymally, Frommer, Goldberg, Shirley Horton, Kehoe, Leslie, Lowenthal, Matthews, McCarthy, Parra, Pavley, Plescia, Spitzer, Wolk | Ayes: | Salinas, Lieber, Daucher, Garcia, LaSuer, Leno, Mullin, Steinberg, Wiggins |

APPROPRIATIONS 24-0

| | | | |
|---|---|---|---|
| Ayes: | Steinberg, Bates, Berg, Lieber, Correa, Daucher, Diaz, Laird, Goldberg, Haynes, Levine, Maldonado, Nation, Negrete McLeod, Nunez, Pacheco, Pavley, Ridley-Thomas, Runner, Samuelian, Simitian, Wiggins, Yee, Mullin | | |

SUMMARY : Provides, among other things, certain specified local agencies with safe drinking water grants funded through the California Safe Drinking Water Fund (Fund). Specifically, this bill :



1)Specifies that the office of the Reclamation Board (Board) shall be located in the County of Sacramento.

2)Adds the requirement that an urban water supplier submit their urban water plan, and copies of amendments or changes to the California State Library.

3)Provides clarification that local groundwater management agencies who request state funding must implement the requirements specified in SB 1938 (Machado), Chapter 602, Statutes of 2002.

4)Authorizes the Department of Water Resources (DWR) to make grants from the California Safe Drinking Water Bond Law of 1988 to specified entities for the purpose of financing domestic water system projects to meet state and federal

drinking water standards.

5)Contains an urgency clause.

EXISTING LAW :

1)Specifies that the Board shall have its office in the City of Sacramento.

2)Requires certain water suppliers to submit an Urban Water Management Plan (UWMP) to DWR and any city or county within which the supplier provides water supplies no later than 30 says after adoption of the UWMP.

3)Provides that the groundwater management plan of a local agency seeking state funds administered by DWR for the construction of groundwater projects or groundwater quality projects shall contain certain specified components if they are to qualify for funding. Excluded are programs that are funded under the Local Groundwater Management Assistance Act of 2000 [AB 303, (Thomson) Chapter 708, Statutes of 2000] or funds authorized or appropriated prior to September 1, 2002.

4)Authorizes DWR, upon the specific approval of the Legislature, to make state grants to suppliers that are political subdivisions of the state, to aid in the construction of projects that will enable the public agency to meet, at a



minimum, safe drinking water standards.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis, the bill allows DWR to award $4,230,000 from the Safe Drinking Water Fund to 14 schools and one school district.

COMMENTS : The technical amendment regarding the location of the Reclamation Board office is needed as the Board has recently moved its office outside the Sacramento City limits.

According to the author, neither the Legislature nor the public has direct access to the original UWMPs. Requiring water suppliers to provide their UWMPs to the California State Library would provide a managed collection of reports and a resource to information that is currently unavailable.

SB 1938 (Machado), Chapter 603, Statutes of 2002, required that the groundwater management plans of local agencies seeking funds from DWR for groundwater projects contain certain specified components if they are to qualify for funding for programs administered by DWR. SB 654, by substituting "section" for "part", provides clarification that local groundwater management agencies who request state funding must implement the requirements specified in SB 1938, not in AB 3030.

According to DWR, the 14 schools and the school district are in dire need of funding as they are unable to meet current drinking water standards without the financial support for improvements. The last two omnibus bills, SB 609 (Costa), Chapter 606, Statutes of 2001, and SB 1384 (Costa), Chapter 969, Statutes of 2002, contained similar language for funding other agencies in similar situations.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

FN: 0003201

BILL ANALYSIS



Date of Hearing: August 20, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 654 (Agriculture and Water Resources) - As Amended: July 6, 2003

Policy Committee: Water, Parks & Wildlife Vote: 20-0 (Consent)
Local Government 9-0 (Consent)

Urgency: Yes State Mandated Local Program: No Reimbursable:

SUMMARY

This bill, this year's Senate Agriculture and Water Resources Committee's omnibus measure, takes action on four disparate matters related to water. Specifically, this bill:

1)Changes, from the City of Sacramento to the County of Sacramento, the required location of the state Reclamation Board's primary office.

2)Requires an urban water supplier to submit a copy of its urban water management plan to the California State Library.

3)Clarifies provisions regarding inclusion of a component establishing funding requirements for the construction of groundwater projects as part of a local agency's groundwater management plan.

4)Allows the DWR to award $4,230,000 from the California Safe Drinking Water (SDW) Fund, created by the voter-approved state water bond act of 1988, to 14 schools and one school district located in 10 counties across the state for their drinking water system improvement projects designed to meet state and federal drinking water standards.

FISCAL EFFECT

Allows the DWR to award $4,230,000 from the SDW Fund to 14 schools and one school district. (SDW Fund.)



COMMENTS

1)Drinking Water Grants . The California Safe Drinking Water Bond of 1988 allows bond proceeds to be spent, subject to the specific approval of the Legislature, as grants to eligible entities to help fund local water system improvements. The SDW Fund, containing proceeds from the 1988 water bond, currently has a balance of $18.6 million. While funding these grants requires Legislative approval, they are customarily funded by annual legislation rather than by the annual Budget Act.

Projects funded with SDW grants are listed, as follows:

| School Entity | County | Amount |
|---|---|---|
| El Nido Elementary | Merced | $125,000 |
| Mattole Triple Junction HS | Humboldt | 185,000 |
| Orosi HS | Tulare | 400,000 |
| Sequoia Union School Dist | Tulare | 400,000 |
| Cuyama Elementary | Santa Barbara | 150,000 |
| Maple School | Kern | 400,000 |
| Roselawn HS | Stanislaus | 350,000 |
| Dehesa Elementary | San Diego | 400,000 |
| Lovell School | Tulare | 400,000 |
| Citrus South Tule School | Tulare | 350,000 |
| Oasis School | Riverside | 120,000 |
| Kit Carson Elementary | Kings | 350,000 |
| Piute Mountain School | Kern | 125,000 |
| Whale Gulch Elementary | Mendocino | 125,000 |
| Pioneer Elementary | Kings | 350,000 |

2)The Reclamation Board 's headquarters is currently located at the "Joint Ops Center" near the corner of Watt Avenue and El Camino Avenue, just outside the Sacramento City Limits. Since this location violates the statute that requires the board's office to be located within the City of Sacramento, this omnibus bill includes a provision that requires the office to be located within Sacramento County instead.

Analysis Prepared by : Steve Archibald / APPR. / (916) 319-2081

BILL ANALYSIS



Date of Hearing: July 2, 2002

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Simon Salinas, Chair
SB 654 (Agriculture and Water Resources Committee) - As Amended: June 26, 2003

SENATE VOTE : 40-0

SUBJECT : Water Omnibus Act of 2003.

SUMMARY : Makes several minor changes to the Water Code. Specifically, this bill :

1)Requires that an urban water management plan be submitted to the California State Library.

2)Makes a technical, nonsubstantive change in order to clarify state funding for groundwater management plans.

3)Specifies that the Reclamation Board's office is located in the County of Sacramento.

4)Provides 15 local agencies with safe drinking water grants funded through the California Safe Drinking Water Fund.

EXISTING LAW :

1)Requires water suppliers that have more than 3,000 service connections or provide more than 3,000 acre-feet of water for domestic use to develop a UWMP that must include a detailed description of a water supplier's water sources, water demand management practices including water conservation or recycling, and the projected water supply reliability for the next 20 years.

2)Requires UWMPs to be updated every five years and submitted to cities and counties in the water suppliers service area and to the Department of Water Resources (DWR).

3)Provides recommendations on the adoption or the implementation of groundwater management planning that local entities may follow.

4)Requires that local entities regulating groundwater must



prepare and implement a groundwater management plan if they request state funding for groundwater projects.

FISCAL EFFECT : None

COMMENTS :

1)Although DWR is required to provide the Legislature with a summary of each UWMP, the Legislature, other water suppliers, and the public have no direct access to the plans. Submitting UWMPs to the State Library provides a managed collection of reports and a resource to information that is currently unavailable.

2)Groundwater in California is regulated and managed by local entities. These local entities may prepare a groundwater

management plan. AB 3030 (Costa), Chapter 947, Statutes of 1992, provides recommendations on the adoption or the implementation of groundwater management planning that local entities may follow. SB 1938 (Machado), Chapter 603, Statutes of 2002, was enacted to require that local entities regulating groundwater must prepare and implement a groundwater management plan if they request state funding for groundwater projects. SB 654 clarifies current law by specifying that local groundwater management agencies who request state funding must implement guidelines set forth specifically in SB 1938, not in AB 3030.

3)At the request of DWR, SB 654 corrects the Water Code section that specifies the Reclamation Board's office location to reflect its recent move out of Sacramento's city limits. Current law reads that the office shall be "at the City of Sacramento." SB 654 changes this to read, "in the County of Sacramento."

4)Also at the request of DWR, the bill provides 15 local agencies with safe drinking water grants funded through the California Safe Drinking Water Fund. These local agencies are in dire need for funding as they are unable to meet current safe drinking water standards without the financial support for improvements. The last two Senate Agriculture and Water Resources omnibus water bills, SB 609 (Costa), Chapter 606, Statutes of 2001, and SB 1384 (Costa), Chapter 969, Statutes of 2002, included identical language for other agencies.



5)PROPOSED AMENDMENT : The author proposes to amend SB 654 to make it an urgency statute.

6)This bill has been double-referred to both the Committees on Water, Parks and Wildlife, where it is scheduled to be heard on July 1, 2003, and to Local Government.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file

Opposition

None on file

Analysis Prepared by : J. Stacey Sullivan / L. GOV. / (916) 319-3958

BILL ANALYSIS



Date of Hearing: July 1, 2003

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Joseph E. Canciamilla, Chair
SB 654 (Agriculture and Water Resources Committee) - As Amended: June 26, 2003

SENATE VOTE : 40-0

SUBJECT : Water Omnibus Act of 2003.

SUMMARY : Among other things, provides certain specified local agencies with safe drinking water grants funded through the California Safe Drinking Water Fund (Fund). Specifically, this bill :

1)Specifies that the office of the Reclamation Board shall be located in the County of Sacramento.

2)Adds the requirement that an urban water supplier to submit their urban water plan, and copies of amendments or changes to the California State Library.

3)Provides clarification that local groundwater management agencies who request state funding must implement the requirements specified in SB 1938. [Chapter 947, Statutes of 1992].

4)Authorizes the Department of Water Resources (DWR) to make grants from the California Safe Drinking Water Bond Law of 1988 to specified entities for the purpose of financing domestic water system projects to meet state and federal drinking water standards.

EXISTING LAW

1)Specifies that the Reclamation Board shall have its office in the City of Sacramento.

2)Requires certain water suppliers to submit an Urban Water Management Plan (UWMP) to DWR and any city or county within which the supplier provides water supplies no later than 30 says after adoption of the UWMP.

3)Provides that the groundwater management plan of a local



agency seeking state funds administered by DWR for the construction of groundwater projects or groundwater quality projects shall contain certain specified components if they are to qualify for funding. Excluded are programs that are funded under the Local Groundwater Management Assistance Act of 2000 [AB 303, Chapter708, Statutes of 2000] or funds authorized or appropriated prior to September 1, 2002.

4)Authorizes DWR, upon the specific approval of the Legislature, to make state grants to suppliers that are political subdivisions of the state, to aid in the construction of projects that will enable the public agency to meet, at a minimum, safe drinking water standards.

FISCAL EFFECT : Unknown

COMMENTS :

The technical amendment regarding the location of the Reclamation Board office is needed as the Board has recently moved its office outside the Sacramento City limits.

According to the author, neither the Legislature nor the public has direct access to the original Urban Water Management Plans. Requiring water suppliers to provide their UWMPs to the California State Library would provide a managed collection of reports and a resource to information that is currently unavailable.

SB 1938 (Machado) [Chapter 603, Statutes of 2002] required that the groundwater management plans of local agencies seeking funds from DWR for groundwater projects contain certain specified components if they are to qualify for funding for programs administered by DWR. The bill, by substituting "section" for "part", provides clarification that local groundwater management agencies who request state funding must implement the requirements specified in SB 1938, not in AB 3030 [Chapter 947, Statutes of 1992].

According to DWR, the 14 schools and the school district are in dire need of funding as they are unable to meet current drinking water standards without the financial support for improvements. The last two omnibus bills, SB 609 [Chapter 606, Statutes of 2001] and SB 1384 [Chapter 969, Statutes of 2002] contained similar language for funding other agencies in similar situations.

The bill has been double-referred and will next be heard in the Local Government Committee. The author will add an urgency clause to the bill in the Local Government Committee so that the Safe Drinking Water grant monies may be made available as soon as possible.

REGISTERED SUPPORT / OPPOSITION :

Support

1 individual



Opposition

None on File.

Analysis Prepared by : Kathy Mannion / W., P. & W. / (916) 319-2096

BILL ANALYSIS

SENATE RULES COMMITTEE | SB 654
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

CONSENT

Bill No: SB 654
Author: Senate Agriculture and Water Resources Committee
Amended: 3/24/03
Vote: 21

SENATE AG. & WATER RESOURCES COMMITTEE : 10-0, 4/1/03
AYES: Machado, Poochigian, Bowen, Denham, Ducheny, Florez, Hollingsworth, Kuehl, Perata, Torlakson

SUBJECT : Water supply planning

SOURCE : Author

DIGEST : This bill requires water suppliers, when submitting their Urban Water Management Plans to government entities, to also submit their plan to the California State Library. This bill also makes a technical, nonsubstantive change to existing law in order to clarify state funding for groundwater management plans.

ANALYSIS : Water suppliers that have more then 3,000 service connections or provide more than 3,000 acre-feet of water for domestic use are required to develop an Urban Water Management Plan (UWMP). UWMPs must include a detailed description of a water supplier's water sources, water demand management practices including water conservation or recycling, and the projected water supply reliability for the next 20 years. UWMPs are required to be updated every five years and must be submitted to cities and counties in the water suppliers service area and to the State Department of Water Resources (DWR).

CONTINUED



Groundwater in California is regulated and managed by local entities. These local entities may prepare a groundwater management plan. AB 3030 (Chapter 947, Statutes of 1992) provides recommendations to the adoption or the implementation of groundwater management planning that local entities may follow. Last year, SB 1938 (Machado), Chapter 603, Statutes of 2002, was enacted to require that local entities regulating groundwater must prepare and implement a groundwater management plan if they request state funding for groundwater projects.

In addition to water suppliers providing their UWMPs to cities and counties in their service area and to DWR, this bill also requires that a plan be submitted to the California State Library (CSL).

Comments

According to the Senate Agriculture and Water Resources Committee analysis:

Limited Access . Although DWR is required to provide the Legislature with a summary of each UWMP, neither the Legislature nor the public has direct access to the plans. Submitting UWMPs to the CSL provides a managed collection of reports and a resource to information that is currently unavailable. _

Enhancement by Example . Even though UWMPs are required to reflect specific criteria, the reports vary considerably among water suppliers. By providing public access, water suppliers may find it helpful to reference other UWMPs in order to improve on their own reports.

Technical Revision . This bill clarifies current law by specifying that local groundwater management agencies who request state funding must implement guidelines set forth specifically in SB 1938, not AB 3030.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

TSM:cm 4/3/03 Senate Floor Analyses



SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS

SENATE AGRICULTURE & WATER RESOURCES COMMITTEE
Senator Michael J. Machado, Chair

BILL NO: SB 654 HEARING: 4/1/03
AUTHOR: Agriculture & Water Resources FISCAL: No
VERSION: 3/24/03 CONSULTANT: Jane Leonard Brown
Dennis O'Connor

Water Omnibus Act of 2003.

BACKGROUND AND EXISTING LAW

Water suppliers that have more than 3,000 service connections or provide more than 3,000 acre-feet of water for domestic use are required to develop an Urban Water Management Plan. Urban Water Management Plans must include a detailed description of a water supplier's water sources, water demand management practices including water conservation or recycling, and the projected water supply reliability for the next 20 years. Urban Water Management Plans are required to be updated every five years and must be submitted to cities and counties in the water suppliers service area and to the Department of Water Resources.

Groundwater in California is regulated and managed by local entities. These local entities may prepare a groundwater management plan. AB 3030 (Chapter 947, Statutes of 1992) provides recommendations on the adoption or the implementation of groundwater management planning that local entities may follow. Last year, SB 1938 (Chapter 603, Statutes of 2002) was enacted to require that local entities regulating groundwater must prepare and implement a groundwater management plan if they request state funding for groundwater projects.

PROPOSED LAW

In addition to water suppliers providing their Urban Water Management Plans to cities and counties in their service area and to the Department of Water Resources, this bill would also require that a plan be submitted to the California State Library.

This bill includes a technical, nonsubstantive change in order to clarify state funding for groundwater management plans.

COMMENTS

1.Limited access. Although the Department of Water Resources is



required to provide the legislature with a summary of each Urban Water Management Plan (UWMP), neither the legislature nor the public has direct access to the plans. Submitting UWMPs to the State Library provides a managed collection of reports and a resource to information that is currently unavailable.

2.Enhancement by example. Even though Urban Water Management Plans are required to reflect specific criteria, the reports vary considerably among water suppliers. By providing public access, water suppliers may find it helpful to reference other UWMPs in order to improve on their own reports.

3.Technical revision. This bill clarifies current law by specifying that local groundwater management agencies who request state funding must implement guidelines set forth specifically in SB 1938, not in AB 3030.

SUPPORT

None received

OPPOSITION

None received

Final Program Environmental Impact Report

# Implementation of the Colorado River Quantification Settlement Agreement

## Volume 1 - EIR Text and Appendices

June 2002

State Clearinghouse Number 2000061034

Coachella Valley Water District
Imperial Irrigation District
The Metropolitan Water District of Southern California
San Diego County Water Authority

Final Program Environmental Impact Report

# Implementation of the Colorado River Quantification Settlement Agreement

## Volume 1 - EIR Text and Appendices

June 2002

State Clearinghouse Number 2000061034

Coachella Valley Water District
Imperial Irrigation District
The Metropolitan Water District of Southern California
San Diego County Water Authority

# PREFACE

# FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE IMPLEMENTATION OF THE COLORADO RIVER QUANTIFICATION SETTLEMENT AGREEMENT

This Program Environmental Impact Report (PEIR) evaluates the potential environmental impacts from the implementation of the Proposed Project, the Quantification Settlement Agreement (QSA). The QSA would implement major components of California's draft Colorado River Water Use Plan (California Plan) and provide part of the mechanism for California to reduce its diversions of Colorado River water to the state's normal year apportionment of 4.4 million acre-feet (MAF). The QSA components would provide a framework for conservation measures and water transfers for a period of up to 75 years (referred to as the quantification period). The Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), and the Metropolitan Water District of Southern California (MWD) are signatory to the QSA.

CVWD, IID, MWD, and the San Diego County Water Authority (SDCWA) have entered into an agreement to be co-lead agencies for the preparation of an EIR in accordance with Section 15051 of the California Environmental Quality Act (CEQA) Guidelines. Although not a signatory to the QSA, SDCWA would benefit from the agreement since the QSA would facilitate the transfer of up to 200,000 acre-feet per year (KAFY) of Colorado River water from IID to SDCWA under the IID/SDCWA Water Conservation and Transfer Agreement dated April 29, 1998. The decision to prepare an EIR to assess the potential environmental impacts of implementation of the QSA was made following the completion of an Initial Study/Environmental Checklist. A Notice of Preparation (NOP) was published on June 6, 2000, and distributed to the California State Clearinghouse and other potentially interested parties.

The QSA is composed of related agreements, activities and projects, which, when taken together, support the consensual agreement among the four co-lead agencies regarding the use of Colorado River water. These proposed agreements describe how the co-lead agencies would budget their portion of California's apportionment of Colorado River water among themselves and to make water conserved in the IID service area and by lining the Coachella and All American canals available to CVWD, MWD, SDCWA, and others.

The QSA PEIR evaluates the aggregate impacts of a series of water transfers, water exchanges, water conservation measures, and other changes identified in the QSA. It is being prepared to ensure that the combined effects of the QSA components are evaluated and that where appropriate, program-wide mitigation measures are developed. This PEIR also provides project-level CEQA compliance for several components of the Proposed Project. Several other components of the Proposed Project have already been analyzed in approved CEQA documents. Although CEQA compliance has already been completed for these project components, this PEIR considers the aggregate impacts of the whole of the action as required by CEQA. Project-specific environmental documents addressing other specific QSA components are currently being prepared or will be prepared at the appropriate time once site-specific locations have been identified.

Potential mitigation measures have been identified for impacts that would result from the implementation of Project components that are receiving program-level analysis. Individual agencies that are responsible for implementing specific components of the QSA will be responsible for refining and adopting specific mitigation measures for these components in the project-level analyses being performed.

The Draft PEIR was released for public review on January 30, 2002. The 45-day review period was scheduled to end on March 15, but in response to requests for additional time, the review period was extended until March 26, 2002. The total review period was 56 days. Either the PEIR or a Notice of Availability of the PEIR was distributed to approximately 70 agencies, public libraries, Indian tribes, organizations, and individuals. Twenty-one comment letters were received from federal, state, regional and local agencies, Indian tribes, non-governmental organizations, and individuals.

Volume 1 of the Final PEIR contains the typical sections of an EIR, including an introduction; description of the Proposed Project; existing environmental conditions, impacts and mitigation measures; cumulative impacts; alternatives; and other sections required by CEQA. Volume 1 also includes the technical appendices that support the impact assessments. Volume 1 of the Final PEIR incorporates changes to the Draft PEIR made in response to comments and minor clarifications made by the co-lead agencies. Volume 2 of the Final PEIR contains comments received on the Draft PEIR and responses to those comments.

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# EXECUTIVE SUMMARY

## ES-1 INTRODUCTION AND PROJECT OBJECTIVES

This Program Environmental Impact Report (PEIR) provides an analysis of the environmental impacts of the Proposed Project, the implementation of the Quantification Settlement Agreement (QSA) among major Southern California water agencies. The co-lead agencies of the PEIR are the Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), the Metropolitan Water District of Southern California (MWD), and the San Diego County Water Authority (SDCWA).

The Proposed Project's goals and objectives are as follows:

- to settle, by consensual agreement, longstanding disputes regarding the priority, use, and transferability of Colorado River water;
- to agree upon a plan for the future distribution of Colorado River water among CVWD, IID, MWD, and SDCWA for up to 75 years, based on agreed-upon Colorado River water budgets for CVWD, IID, MWD, and SDCWA;
- to facilitate agreements and actions that, when implemented, would ensure the certainty and/or reliability of Colorado River water supplies available to CVWD, IID, MWD, and SDCWA;
- to assist these agencies in meeting their water demands without exceeding California's apportionment of Colorado River water;
- to identify agreed-upon terms and conditions for the conservation and transfer of specific amounts of Colorado River water within California; and
- to provide incentives to promote conservation of Colorado River water.

## ES-2 PROJECT LOCATION

The project location includes much of Southern California. The region of influence (ROI) comprises the historic floodplain of the Colorado River below Lake Mead and the areas that receive Colorado River water: the IID, CVWD, and MWD service areas, including the SDCWA service area. The service areas include all or part of Ventura, Los Angeles, Orange, San Diego, San Bernardino, Riverside, and Imperial counties. The ROI also includes the lower Colorado River mainstem and the areas of conveyance and distribution of Colorado River water by these agencies.

## ES-3 PROJECT DESCRIPTION

The Proposed Project involves a series of water transfers, water exchanges, water conservation measures and other changes identified in the QSA. The QSA is a proposed agreement among CVWD, IID, and MWD to budget their portion of California's apportionment of Colorado River

water among themselves and to make water conserved in the IID service area and by lining the Coachella and All America canals available to CVWD, MWD, SDCWA, and others. Implementation of the QSA would not affect the diversion, distribution, and/or use of Colorado River water except within California. Within California, the QSA would only affect the diversion, distribution, and/or use of Colorado River water by the participating agencies (CVWD, IID, MWD, and SDCWA). The QSA would not affect the diversion, distribution, and/or use of Colorado River water by other agencies within California that hold rights to Colorado River water.

The QSA quantifies, by agreement, the amount of Colorado River water available to the participating agencies and calls for specific, changed distribution of that water among the agencies for the quantification period. The quantification period extends for up to 75 years, although the QSA anticipates a transition period of approximately 25 years for the full implementation of water conservation/transfers and exchange projects. Many of the water conservation and transfer components of the QSA would be implemented incrementally over a period of several years. The water agencies that are affected by the implementation of the QSA are the participating agencies (CVWD, IID, MWD, and SDCWA). Although not a signatory to the QSA, SDCWA would benefit from the QSA since the QSA would facilitate implementation of the 1998 IID/SDCWA Water Conservation and Transfer Agreement.

The QSA is composed of related agreements, activities and projects, which, when taken together, support the consensual agreement among the four co-lead agencies regarding the use of Colorado River water. The PEIR addresses the aggregate impacts of the implementation of each of the program components listed below.

A. IID's Priority 3a Colorado River Water Capped at 3.1 million acre-feet per year (MAFY)

B. QSA Changes to IID/MWD 1988 Agreement, IID/MWD/PVID/CVWD 1989 Approval Agreement, and MWD/CVWD 1989 Agreement to Supplemental Approval Agreement

C. IID/SDCWA Transfer of Conserved Water

D. MWD/SDCWA Exchange of Conserved Water (Up to 200 thousand acre-feet per year [KAFY])

E. IID/CVWD/MWD Transfer of Conserved Water (First 50 KAFY transferred from IID to CVWD and/or MWD, Second 50 KAFY transferred from IID to CVWD and/or MWD through year 44 and from MWD to CVWD beginning in year 45 of the QSA)

F. Transfer of Conserved Water from the All American Canal Lining Project (67.7 KAFY)

G. Priority 6a Colorado River Priorities and Volume Allocations

H. CVWD's Priority 3a Colorado River Water Capped at 330 KAFY

I. Transfer of Conserved Water from the Coachella Canal Lining Project (26 KAFY)

J. Transfer of Water (35 KAFY) - MWD/CVWD State Water Project (SWP) Entitlement Transfer and Exchange Agreement

K. MWD Priority 4 and 5 Colorado River Water Cap

L. Over and Under Run of Priorities 1, 2 and 3b

M. Use by Miscellaneous Present Perfected Rights and Federal Reserved Rights, including Certain Indian Reservations

N. QSA Shortage Sharing Provisions

Separate environmental analysis of many of the Agreement components has either been completed or is under preparation. The PEIR also addresses the project-specific impacts of those components not addressed in a separate environmental document.

**Related Plans, Programs, and Actions**

Several planned water resources management plans, programs, and actions may affect the allocation, distribution, and/or use of Colorado River water and associated environmental resources in California and adjacent states. A description of these plans, programs, and actions is provided below for background information. Additional information on related plans, programs and actions is provided in section 1.5.

*Implementation Agreement*

The Implementation Agreement (IA), an agreement between CVWD, IID, MWD, SDCWA, and the Secretary of the Interior, specifies the federal actions that are necessary to implement the QSA. Execution of the IA would commit the Secretary to making Colorado River water deliveries in accordance with the terms and conditions of the IA to enable the implementation of the QSA. A draft Environmental Impact Statement (EIS) that evaluates the environmental impacts of the execution of the IA and related accounting and environmental actions was issued by Reclamation in January 2002.

*Inadvertent Overrun and Payback Policy*

Reclamation is proposing to adopt the Inadvertent Overrun and Payback Policy (IOP), which would identify inadvertent overruns of Colorado River water and define subsequent payback requirements to the Colorado River. The IOP must be in place prior to implementation of the IA and QSA. A draft EIS that evaluates the environmental impacts of the IOP and related actions was issued by Reclamation in January 2002.

*Biological Conservation Measures*

In August 2000, Reclamation released its *Biological Assessment for Proposed Interim Surplus Criteria, Secretarial Implementation Agreements for California Water Plan Components, and Conservation Measures on the Lower Colorado River (Lake Mead to the Southerly International Boundary)* (Biological Assessment). The Biological Assessment identified potential impacts that could occur to federally listed fish and wildlife species and their associated critical habitats within the historic floodplain of the Colorado River between Parker Dam and Imperial Dam from implementing a change in point of delivery and diversion of Colorado River water from Imperial Dam to Lake Havasu of 400 KAFY. The biological conservation measures to offset potential impacts from the change in point of delivery and diversion were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (Service) and were incorporated into the Service's January 2001 *Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake*

*Mead to the Southerly International Boundary, Arizona, California, and Nevada* (Biological Opinion). A draft EIS that evaluates the environmental impacts of the biological conservation measures and related actions, including the IA and IOP, was issued by Reclamation in January 2002.

*Coachella Valley Water Management Plan*

CVWD prepared the Coachella Valley Water Management Plan (CVWMP) (CVWD 2000) to establish an overall program for managing its surface and groundwater resources in the future. The CVWMP involves a number of actions to reduce the current overdraft of the groundwater basin in the Coachella Valley. The CVWMP consists of both QSA and non-QSA components. Water that becomes available through implementation of the QSA will be used to reduce groundwater overdraft in the Coachella Valley. CVWD is currently preparing a Program EIR to address the potential environmental impacts of the CVWMP implementation.

*IID Water Conservation and Transfer Project*

IID Water Conservation and Transfer Project provides for water conservation in the IID service area and transfer of conserved water to SDCWA, MWD, and CVWD. In the event that the QSA is executed, IID would conserve up to 300 KAFY by a combination of system and on-farm conservation methods and would transfer up to 200 KAFY to SDCWA. CVWD and/or MWD would have the option to acquire up to 100 KAFY. A draft EIR/EIS was published in January 2002 that evaluates the IID Water Conservation and Transfer Project.

## ES-4 SUMMARY OF SIGNIFICANT IMPACTS AND MITIGATION MEASURES

Table ES-1, located at the end of this Executive Summary, identifies the significant, less-than-significant, and beneficial impacts that would occur if the Proposed Project were implemented. It also lists the mitigation measures that have been identified to reduce significant impacts, as well as the residual impacts that would occur following their implementation. The following summarizes the significant impacts of the Proposed Project by resource. Details regarding Project impacts are provided in Chapter 3.

### ES-4.1 Water Resources

The decrease in the amount of drainage water discharged into the Alamo River and IID drains could result in selenium concentrations exceeding the EPA Aquatic Life Criteria for Continuous Concentration. This would be a significant and unavoidable impact to water quality.

The increase of Colorado River water supplies for use in the CVWD service area would result in an increase in selenium in drain flows, which is considered a potentially significant and unavoidable impact. Groundwater recharge with Colorado River water in the Coachella Valley would result in an increase in total dissolved solids (TDS) of lower aquifer groundwater. This is considered a significant and unavoidable impact.

### ES-4.2 Biological Resources

*IID Service Area*

Losses of wet areas and phreatophytic vegetation from the All American Canal Lining Project would be significant but would be mitigated to less-than-significant levels by habitat replacement and enhancement as part of that project. Potential alteration of emergent and in-channel vegetation along drains from on-farm conservation programs is considered significant but mitigable.

The All American Canal Lining Project would reduce habitat for non-native fish and would decrease seepage-fed areas adjacent to the canal, which are important habitat areas for certain wildlife species. There is also a potential for large mammals to enter and drown in the canal. Changes in amount or composition of vegetation from conservation measures could adversely impact bird and amphibian species using that habitat, and would be considered a significant but mitigable impact.

Construction-related activities in the IID service area related to on-farm conservation measures and water delivery system improvements may impact sensitive plant species, but the selection of sites for such activities would consider environmental concerns and sensitive plant species. Conservation measures have the potential to impact desert pupfish and impacts could range from less-than-significant to significant but mitigable.

*CVWD Service Area*

Losses of wetland and riparian plant communities from the Coachella Canal Lining Project are potentially significant. Construction activities have the potential to cause both temporary and permanent losses of native vegetation, and impacts would be less than significant, particularly in previously disturbed areas, but could be potentially significant but mitigable if native vegetation is permanently lost. The project also has the potential to adversely affect habitat for the Yuma clapper rail, California black rail, desert pupfish, and desert tortoise.

Constructing groundwater recharge facilities in the CVWD service area may impact wildlife habitat, but it is anticipated that these adverse impacts would be less than significant. The Dike 4 recharge facility may be constructed within critical habitat for the peninsular bighorn sheep. Should significant impacts be identified once specific sites are selected, they would be mitigable to less than significant.

Other construction-related activities (e.g., construction of pipelines and pumping stations) may impact sensitive plant species in the CVWD service area, but selection of sites for such activities would consider environmental concerns and sensitive plants species. Significant impacts would be mitigable to less than significant.

The increase in quantity of water and velocity of the flow within the drains in the CVWD service area due to an increase in groundwater levels has a potential to significantly impact desert pupfish populations residing within the drains. The potential impact will be monitored and mitigation will be formulated in cooperation with the resource agencies should the

monitoring effort indicate an adverse effect to the species. This potentially significant impact would be reduced to less-than-significant levels.

*Lower Colorado River*

The potential drop in median groundwater levels along the lower Colorado River could impact riparian vegetation with shallow roots (i.e., cottonwood and willow trees) along the outward fringes of the riparian zone. This impact to aquatic, marsh, and riparian vegetation is considered a potentially significant but mitigable impact.

Implementation of the Proposed Project has the potential to reduce wetland and riparian habitat along the lower Colorado River that is used by amphibians, reptiles, riparian and marsh obligate birds, and mammals. This potential loss of habitat would potentially be a significant but mitigable impact.

The potential loss of backwater area and main channel habitat would be a potentially significant impact. The potential reduction in emergent vegetation may result in the reduction of habitat for the Yuma clapper rail and the California black rail, and this potential loss of habitat would be considered a potentially significant impact. There is a potential, but less well-defined impact to riparian vegetation along the lower Colorado River, which could affect the southwestern willow flycatcher, western yellow-billed cuckoo, Arizona Bell's vireo, elf owl, Gila woodpecker, and gilded flicker. Impact to this habitat would be considered potentially significant. All of the above impacts would be mitigable to less than significant.

*Salton Sea*

Reduced inflows to the Salton Sea could produce additional increases in salinity in the Salton Sea and thus accelerate the loss of food sources for fish-eating birds at the Salton Sea due to increasing salinity. This is considered a potentially significant but mitigable impact. The accelerated change in the natural habitat of the desert pupfish is considered a potentially significant but mitigable impact. Significant but mitigable impacts would occur to the California brown pelican, black skimmer, double-crested cormorant, and other resident and migratory birds that forage on fish at the Salton Sea.

**ES-4.3 Geology, Soils, and Minerals**

Construction activities in the IID and CVWD service areas could cause a temporary increase in wind and water erosion of bare soils. This is a potentially significant but mitigable impact.

If groundwater levels in the CVWD service area increase to within 30 feet of the ground surface under habitable structures or important infrastructure, the liquefaction hazard could increase, which would be a potentially significant but mitigable impact.

**ES-4.4 Land Use**

No significant land use impacts would occur.

### ES-4.5 Agricultural Resources

If fallowing of land as a conservation measure and/or the use of agricultural areas for habitat mitigation or restoration within the IID or CVWD service area and along the lower Colorado River result in the conversion of agricultural lands to non-agricultural use, it will result in a significant and potentially unavoidable impact to agricultural resources in Southern California.

Construction of recharge facilities in the CVWD service area could have a significant but mitigable effect on agricultural resources if they were located in agricultural areas because they could convert farmland to a non-agricultural use. As specific sites for the recharge facilities are located, additional environmental review will be conducted that will identify impacts to agricultural resources.

### ES-4.6 Recreational Resources

Use of the area around the All American Canal by off-highway vehicles (OHVs) could present a hazard during construction, which would be a potentially significant but mitigable impact. Construction of a parallel canal would adversely affect recreational fishing by reducing the habitat for sportfish. Lining also could reduce downstream numbers of sportfish by reducing in-canal reproduction. These impacts would be significant but mitigable.

Construction activities during the lining of the Coachella Canal would temporarily disrupt some recreational uses of the area. Construction could block access to a recreational trail on Bureau of Land Management (BLM) lands, the Bradshaw Trail, which would be a significant but mitigable impact.

Decreasing water surface elevation of the Salton Sea would affect existing recreational facilities, some of which would have to be relocated (i.e., campgrounds, docks) or re-established (i.e., roads and trails leading to the water). Decreasing water levels would expose footings and other remnants of campgrounds that are currently underwater. The impact to developed recreational facilities from decreased water levels, therefore, is considered significant but mitigable.

The Proposed Project and related projects would accelerate the increase in salinity at the Salton Sea and reduce Sea elevation, which would accelerate the decline of the sport fishery that is anticipated under existing and future projected trends at the Salton Sea. This would hasten the decrease in the number of fish that live in the Salton Sea, adversely affecting sport fishing opportunities. This would be a significant but mitigable impact.

### ES-4.7 Air Quality

Construction activities associated with on-farm and system water conservation measures in the IID service area would impact air quality from combustive emissions due to the use of fossil fuel-fired construction equipment and fugitive dust ($PM_{10}$) emissions due to ground-disturbing activities. The impact of combustive emissions would be less than significant, but fugitive dust emissions could be significant but mitigable from activities that disturb large amounts of soil. If fallowing is used to reduce water usage in the IID service area, there is a potential for significant but mitigable fugitive dust emissions from the fallowed land.

The Coachella Canal Lining Project EIS/EIR (USBR and CVWD 2001) determined that $PM_{10}$ emissions (due to fugitive dust) from construction activities would constitute a significant impact even after mitigation. However, this impact would only last for the duration of construction activities.

Development of other new facilities in the CVWD service area would generate air pollutant emissions (NOx and $PM_{10}$) from construction-related activities. These activities would cause temporary impacts to local air quality and would be significant if they exceeded air pollutant thresholds established by the South Coast Air Quality Management District (SCAQMD) within the South Coast Air Basin (SCAB) Project region. Due to their short-term nature, construction-related activities would not interfere with attainment of the national and state ambient air quality standards over the long term.

Although the new shoreline created by reduced inflows to the Salton Sea would only marginally increase the total land area within the ROI that presently generates fugitive dust emissions, fugitive dust emissions from these areas are conservatively estimated to be significant, due to the $PM_{10}$ nonattainment status of the region, but mitigable.

### ES-4.8 Cultural Resources

Construction in the IID and CVWD service areas would involve ground disturbance that could impact a significant archaeological or paleontologic site or human remains. Such impacts would be significant but mitigable. Potentially significant but mitigable impacts could result if implementation of Project components would require demolition or relocation of a significant historic architectural resource.

Any physical alteration of the Coachella Canal would be a potentially significant but mitigable impact.

Reduction of the current and projected surface area of the Salton Sea may expose previously submerged cultural resources, which would leave those resources susceptible to site erosion and looting. This could result in a significant impact to cultural resources. Newly exposed land also could be cultivated or developed if found to be suitable for such use, which could impact cultural resources. Significant impacts would be mitigable.

### ES-4.9 Noise

Construction in the IID and CVWD service areas would create short-term noise impacts from the use of various types of equipment. Construction would generally take place in rural, unpopulated areas, well away from noise sensitive receptors. However, should noise-sensitive receptors, including riparian birds, be exposed to noise in excess of applicable standards, the impact would be significant but mitigable.

Operations in the IID and CVWD service areas would require the operation of pumps that could generate long-term noise in excess of 70 dBA at 50 feet. Depending on the location of these pumps in relation to noise-sensitive receptors, noise from the pumps could cause a significant but mitigable impact.

### ES-4.10 Aesthetics

If pipelines or pump stations in the CVWD service area were located in a visually sensitive area, impacts could be significant but mitigable.

Due to implementation of the Proposed Project, views of the Salton Sea from some public areas would include increased dry land and decreased open water. The exposed area would look like the existing beach, but views of the water from the developed public viewing facilities would be from a much greater distance. The change would be very gradual, and the visual impact would not be perceptible except over a long period, but ultimately, the impact would be significant but mitigable.

### ES-4.11 Hazards and Hazardous Materials

Construction activities in the IID and CVWD service areas may temporarily impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan if such activities coincide with construction in evacuation or other emergency routes. This would be a potentially significant but mitigable impact.

The proposed improvements in the IID and CVWD service areas likely would be located in agricultural or remote areas and are not likely to be located on sites that are known to contain hazardous materials or are included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5. If they were, however, impacts would be significant but mitigable.

Mosquito habitat could be created if new recharge basins were constructed in the CVWD service area, which would be a potentially significant but mitigable impact.

### ES-4.12 Public Services, Utilities, and Transportation

Construction of new facilities in the CVWD service area could cause temporary disruption of present traffic patterns and increases in traffic hazards, or availability of parking on local roadways. Given the existing favorable conditions and the short duration of construction, impacts would not be significant unless construction occurred in the immediate vicinity of heavily traveled roadways and intersections. Significant impacts would be mitigable to less than significant.

Pipelines, pumping stations, and recharge basins would likely be located in rural or undeveloped areas away from schools or providers of emergency services. However, if construction occurred near such facilities, it could restrict emergency access, which would be a significant but mitigable impact.

### ES-4.13 Population, Housing, and Employment

No significant impacts to population, housing, or employment would occur.

## ES-5 SUMMARY OF SIGNIFICANT CUMULATIVE IMPACTS

The cumulative impacts of the Proposed Project combined with other regional water supplies or closely related projects in the region are described in detail in Chapter 4 and are summarized in

Table ES-2. A list approach was used to identify the closely related projects that could result in cumulatively considerable impacts. Potential projects that may result in a cumulative impact in combination with the Proposed Project were initially identified through a review of regional and local environmental documents. Once identified, these projects were examined for their potential to result in a cumulative impact when combined with the Proposed Project. Those projects identified for the analysis of cumulative impacts were generally those that involved water resources in the region, those projects with a potential to affect the resources of the Colorado River or Salton Sea, or those projects that have a potential to impact the same resources as the components of the Proposed Project. This section summarizes the significant cumulative impacts that would occur to each resource considered in this PEIR. Impacts that were described as speculative in section 4.2 are not included in the following discussion.

### ES-5.1 Water Resources

The construction of conservation/restoration actions associated with the MSCP and biological mitigation measures described in section 3.2 could result in short-term impacts to water quality along the lower Colorado River. These impacts could be cumulatively significant if these actions occurred at the same general time and location. These impacts would be mitigable through standard construction practices that would be developed once specific sites were selected. Such practices include, but are not limited to, the installation of temporary berms and sedimentation traps, such as silt fencing, straw bales, and sand bags, revegetating disturbed areas immediately after grading, and conveying surface run-off in a manner that minimizes the potential for erosion and sedimentation. Geotextile binding fabrics should be used if necessary to hold slope soils until vegetation is established. With mitigation, these potential short-term impacts would be reduced to less-than-significant.

### ES-5.2 Biological Resources

The Proposed Project and the Land Management, Crop Rotation, and Water Supply Program in the Palo Verde Valley together would slightly lower the Colorado River median water surface elevation between Parker Dam and the Palo Verde Diversion Dam. This would result in a potentially significant cumulative impact to biological resources. Depending on the details of individual agreements for offstream storage, cumulative impacts to biological resources along the lower Colorado River could be significant. It is anticipated that most of the potential cumulative impacts to biological resources would be attributable to the Proposed Project. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impact to a less-than-significant level. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impact. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

The construction of conservation/restoration actions associated with the MSCP and biological mitigation measures described in section 3.2 could result in short-term impacts to biological resources along the lower Colorado River. These impacts could be cumulatively significant if these actions occurred at the same general time and location. These impacts would be mitigable through standard construction practices that would be developed once specific sites were selected. With mitigation, these potential short-term impacts would be reduced to less-than-significant.

The North Baja Powerline Project could result in a slight increase in the loss of riparian and marsh habitat in the IID service area and so has the potential for a significant cumulative impact in combination with the Proposed Project. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts.

Implementation of the CVWMP would result in potential localized impacts to areas in the Coachella Valley where facilities may be located. These areas of disturbance may be within the same general locations as those facilities associated with the Proposed Project components of the CVWMP. Impacts to biological resources could be cumulatively significant. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

### ES-5.3 Geology, Soils, and Minerals

Significant impacts to geology and soils would result from construction of Proposed Project facilities in the IID and CVWD service areas. To the extent that construction of projects such as the CVWMP, Te'Ayawa Energy Center, Cabazon Power Plant occurred at the same time and/or in the same general location as the Proposed Project, impacts could be cumulatively significant. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

### ES-5.4 Land Use and Planning

No significant cumulative impacts to land use and planning would result from implementation of the Proposed Project and related projects.

### ES-5.5 Agricultural Resources

The Proposed Project could result in the conversion of Important Farmland to non-agricultural use, as described in section 3.5. This is considered a significant and potentially unavoidable impact. Depending on the sites that are selected for restoration/conservation actions, the MSCP also could result in such a conversion, as could the implementation of the Proposed Project's biological mitigation measures along the Colorado River, and the North Baja Powerline Project. If such conversion occurred, it would be a significant and potentially unavoidable cumulative impact to agricultural resources in Southern California.

### ES-5.6 Recreational Resources

No significant cumulative impacts to recreational resources would result from implementation of the Proposed Project and related projects.

### ES-5.7 Air Quality

Construction of Proposed Project facilities in the IID and CVWD service areas would create short-term significant air quality impacts. To the extent that construction of projects such as the CVWMP, Te'Ayawa Energy Center, and Cabazon Power Plant occurred at the same time and/or in the same general as construction associated with the Proposed Project, air quality could be cumulatively significant. If these projects and the Coachella Canal lining project were constructed at the same time, short-term impacts to air quality could be cumulatively significant and unavoidable. With the exception of the potential air quality impact described above, mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

### ES-5.8 Cultural Resources

Impacts to cultural resources from the Proposed Project could result from construction in the IID and CVWD service areas and at the Salton Sea. Impacts to cultural resources also could result from construction of related projects in the IID and CVWD service areas. Impacts to cultural resources along the lower Colorado River could result from ground disturbance required to implement the conservation/restoration actions of the MSCP and the Proposed Project's biological mitigation measures. Impacts could be cumulatively significant. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

### ES-5.9 Noise

The Proposed Project could result in short-term noise impacts from construction and long-term impacts from the operation of pumps in proximity to noise-sensitive receptors. Related construction projects also could result in short-term noise impacts. A significant cumulative impact could occur if construction occurred in the same general area at the same time. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts. It is anticipated that mitigation measures also would be developed for related projects, which would further reduce impacts.

### ES-5.10 Aesthetics

The Proposed Project could cause significant aesthetic impacts should facilities in the CVWD service area be constructed in visually sensitive areas. Significant visual impacts are not expected to result from the other related projects, but mitigation measures associated with the Proposed Project would reduce any potentially significant cumulative impacts to less-than-

significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts.

### ES-5.11 Hazards and Hazardous Materials

The Proposed Project would result in a significant impact to hazards and hazardous materials if construction temporarily interfered with an adopted emergency response plan or occurred in proximity to evacuation or other emergency routes. It also could result in a significant impact if construction occurred on sites containing hazardous materials. Significant cumulative impacts could occur to the extent that other related projects caused similar impacts. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts.

### ES-5.12 Public Services, Utilities, and Transportation

Construction associated with the Proposed Project in the IID and CVWD service areas could cause temporary impacts to transportation and emergency access to facilities such as schools. Significant cumulative impacts could occur if construction of related projects occurred in the same general location and at the same time as the Proposed Project. Mitigation measures associated with the Proposed Project would reduce the potentially significant cumulative impacts to less-than-significant levels. No additional mitigation for the Proposed Project other than that identified in this PEIR would be necessary to address the cumulative impacts.

### ES-5.13 Population, Housing, and Employment

No significant cumulative impacts to population, housing, or employment would result from implementation of the Proposed Project and related projects.

## ES-6 ALTERNATIVES CONSIDERED

Impacts of the Alternatives to the Proposed Project are discussed in Chapter 5 and summarized below.

### Alternative 1: No Project

Under Alternative 1, the Department of Interior would enforce the Law of the River under its existing terms and require California to divert no more than 4.4 million acre feet (MAF) during normal years. Based on the existing priority system, the diversions to MWD would be reduced from the baseline condition of approximately 1.25 MAFY to approximately 660 KAFY. Net diversions for Priority 1, 2, and 3 users (including CVWD and IID) would be limited to 3.85 MAFY, less the amount of water made available under the 1989 IID/MWD Agreement described in section 1.5. There would also be no increased use of Colorado River water in the CVWD service area, resulting in continued dependence on groundwater resources.

MWD and SDWCA would be expected to make up the shortfall of approximately 650 KAFY in Colorado River water supplies through other water management methods and/or supplies not

involving additional diversions from the Colorado River. These could include increased recycling and conservation, and other methods including desalination of ocean water, and use of other supply options.

*Anticipated Impacts of Alternative 1*

The beneficial impacts of the Proposed Project from reduced groundwater overdraft in the Coachella Valley would not occur. Water conserved and transferred as part of the All American and Coachella Canal lining projects, included as part of the Proposed Project, also would not occur. Significant unavoidable impacts in the CVWD and/or IID service areas would not occur. Significant but mitigable impacts to biological resources, geological resources, water quality, recreational resources, air quality, cultural resources, noise, agricultural resources, aesthetics, hazards, and transportation in the IID and/or CVWD service areas also would not occur.

Reduction in average water flows in the Colorado River from Parker to Imperial dams due to the implementation of the Proposed Project would not occur, nor would the resulting potentially significant impacts to biological resources of the lower Colorado River.

The no project alternative would avoid the acceleration of impacts to air quality, biological resources, cultural resources, recreational resources, and aesthetics of the Salton Sea that would occur under the Proposed Project. Future impacts to these Salton Sea resources would occur regardless of whether the Proposed Project is implemented, although at a slower rate.

Environmental impacts resulting from other water management actions (i.e., conservation, recycling and desalting) that may be implemented as part of Alternative 1 would primarily occur in the CVWD, MWD, and SDWCA service areas.

*Conclusion*

This alternative would not meet any of the goals of the Proposed Project, or be consistent with the objectives of the California Colorado River Water Use Plan. It would not:

- settle by consensual agreement disputes regarding Colorado River water use;
- establish a plan for future distribution of Colorado River water among the co-lead agencies;
- maintain certainty and reliability of Colorado River water supplies among the co-lead agencies;
- result in agreement on terms and conditions for Colorado River water conservation and transfers; and
- provide incentives for conserving Colorado River water.

None of the significant or less-than-significant environmental impacts of the Proposed Project would occur. Degradation of the Salton Sea would continue. Beneficial impacts associated with lining the All American and Coachella canals would not occur, nor would beneficial impacts from reduced groundwater overdraft in the Coachella Valley. Under the no project alternative, Proposed Project-related impacts to the Salton Sea would be avoided.

**Alternative 2: Implement the Proposed Project while Minimizing Changes in Points of Diversion**

Alternative 2 would result in the implementation of the Proposed Project while minimizing changes to the current diversion points and amounts on the Colorado River. Under Alternative 2, Colorado River flows (and the resultant median water surface elevation) between Parker and Imperial dams would remain largely unchanged. Therefore, Alternative 2 would reduce the anticipated project-related adverse impacts on Colorado River fish, wildlife, and wetland resources.

*Alternative 2A: Connect the Coachella Canal to the Colorado River Aqueduct*

*Description of Alternative 2A*

Alternative 2A would connect the Coachella Canal to the Colorado River Aqueduct (CRA) by adding a new pipeline and associated facilities between these two canals west of the City of Coachella. This option would retain the current diversion points and amounts on the Colorado River but would allow water to be transferred to MWD and SDCWA to be diverted at Imperial Dam rather than at Parker Dam. The water ultimately would be delivered into the CRA for use in the MWD or SDCWA service areas and to implement the San Luis Rey Indian Water Rights Settlement Act.

*Anticipated Impacts of Alternative 2A*

Impacts to the IID, CVWD, MWD, and SDCWA service areas from water conservation and/or use would remain the same as described for the Proposed Project, as would impacts to the Salton Sea. Alternative 2A would avoid impacts associated with the change in diversion of water from the Colorado River. No loss of habitat on the Colorado River would occur. Implementation of this alternative would result in both short-term and long-term impacts within the Coachella Valley associated with the construction and operation of the new pipeline connecting the Coachella Canal to the CRA.

*Conclusion*

Implementation of Alternative 2A, while reducing potential impacts to biological resources along the Colorado River, would not reduce any other impacts associated with implementation of the Proposed Project. There is a potential that the construction of the pipeline connecting the Coachella Canal to the CRA would result in a number of substantial and possibly unavoidable significant impacts to water resources, biological resources, geology, soils and minerals, agricultural resources, air quality, cultural resources, noise, aesthetics, and hazards and hazardous materials. This alternative would not have any major advantage over the Proposed Project because mitigation measures for biological impacts in the Colorado River area would reduce any impacts to less-than-significant levels. This alternative would meet all of the objectives of the Proposed Project.

*Alternative 2B: Connect the All American Canal to the SDCWA System*

*Description of Alternative 2B*

Alternative 2B would connect the All American Canal to the SDCWA system via a new pipeline between the western end of the All American Canal in Imperial County to the San Vincente Reservoir within San Diego County. This option would allow implementation of the IID/SDCWA Water Conservation and Transfer Agreement, as amended by the QSA. Up to 200 KAFY would be diverted at Imperial Dam for use by SDCWA, rather than at Parker Dam as would occur under the Proposed Project.

*Anticipated Impacts of Alternative 2B*

Implementation of this alternative would reduce the impacts of the Proposed Project to biological resources along the Colorado River by reducing the amount of marsh and riparian vegetation affected. Implementation of this alternative has all of the other impacts that the Proposed Project would have. Additional potential impacts associated with the proposed pipeline construction could occur during the construction period.

*Conclusion*

Implementation of Alternative 2B, while partially reducing potential impacts to biological resources along the Colorado River, would not reduce any other impacts to the Salton Sea associated with the implementation of the Proposed Project. There is also a potential that the construction of the pipeline and reservoirs would result in a number of substantial and possibly unavoidable significant impacts as identified. Although potentially feasible, the alternative would not have any major environmental advantage over the Proposed Project. This alternative would lessen impacts along the Colorado River, but a portion of the mitigation measures that have been identified to reduce potential impacts to biological resources to less-than-significant levels would still need to be implemented. This alternative would meet all of the objectives of the Proposed Project.

**Alternative 3: Reduced Project Implementation to 230 KAFY of Water Conservation and Transfer**

*Description of Alternative 3*

Alternative 3 includes partial implementation of the Proposed Project by reducing the level of conservation and transfer to the minimum allowable under the IID/SDCWA Water Conservation and Transfer Agreement. The purpose of this alternative is to substantially lessen the biological, recreational, air quality, and water impacts of the Proposed Project on the Salton Sea, IID service area, and the Colorado River. Under this alternative, 130 KAFY rather than 200 KAFY would be conserved via on-farm conservation methods and transferred to SDCWA. The First and Second 50 KAFY components of the Proposed Project could be satisfied by a mixture of conservation measures, including on-farm irrigation system improvements, delivery system improvements, and/or fallowing. The remainder of the Proposed Project would be implemented as proposed.

*Anticipated Impacts of Alternative 3*

Under this alternative, the maximum anticipated reduction in flows of the Colorado River between Parker and Imperial dams would be 318 KAFY. There would also be reduced conservation of water in the IID service area, and therefore, reduced impacts to Salton Sea resources, although impacts to the Salton Sea, as described above, would remain significant. Beneficial impacts to groundwater resources in the Coachella Valley would be the same as the Proposed Project.

*Conclusion*

Alternative 3, although decreasing the amount of water transferred, provides only a slight reduction of potential impacts to the Colorado River and, at best, slightly less impacts to the IID service area and the Salton Sea than the Proposed Project. This alternative would meet the objectives of the Proposed Project. This alternative, however, would not avoid or substantially reduce the impacts of the Proposed Project.

**Alternative 4: Proposed Project Implementation With Additional Conservation**

*Description of Alternative 4*

Alternative 4 was designed to avoid impacts to fish-eating birds at the Salton Sea resulting from a reduction in inflow volume, as contemplated under the Proposed Project. Under this alternative, water conserved by additional actions within the IID service area would offset reduced inflows to the Salton Sea resulting from water conservation and transfer actions by IID. Replacement water would be made available for the period necessary to avoid impacts of the Proposed Project on fish-eating birds as a result of the loss of the food source for these birds or to avoid the recreational impact of the loss of the Salton Sea sport fishery.

*Anticipated Impacts of Alternative 4*

Except for the elimination of the temporary impacts to fish-eating birds and the sport fishery, the type of impacts to the Salton Sea ultimately would be generally the same as those of the Proposed Project although they could differ in intensity. Temporary impacts to fish-eating birds would be avoided since the water from the additional conservation would allow water to be temporarily made available to avoid increasing salinity due to reduced Sea elevation. Implementation of this alternative would delay impacts to air quality, cultural resources, and recreational resources from the Proposed Project as a result of reduced water water surface elevation of the Salton Sea.

*Conclusion*

Alternative 4 would avoid significant impacts on the Salton Sea fishery and impacts to fish-eating birds caused by the loss of the fishery. Other impacts would be delayed for the period that replacement water is utilized. This alternative would meet most of the Proposed Project's goals.

### ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The California Environmental Quality Act (CEQA) requires that an EIR identify the environmentally superior alternative. In the case of this PEIR, the No-Project Alternative (Alternative 1) is considered environmentally superior since it would not result in any of the identified significant impacts associated with the implementation of the Proposed Project.

CEQA requires that an additional alternative be defined as environmentally superior if the no project alternative is considered environmentally superior. Depending upon how conservation is implemented and which mitigation measures are employed, the Proposed Project may be environmentally superior to the other alternatives. If conservation actions and mitigation measures that would reduce impacts to the fish populations and fish-eating birds at the Salton Sea are not employed as part of the Proposed Project, then Alternative 4 would be considered environmentally superior. Alternative 4 would avoid significant impacts to biological resources associated with the implementation of the Proposed Project to the Salton Sea. Impacts to resources in other areas from other project alternatives would not be substantially different than those of the Proposed Project, with the potential exception of impacts to the biological resources of the lower Colorado River, which would be avoided or reduced by Alternatives 2A and 2B, respectively.

## ES-7 GROWTH-INDUCING IMPACTS

The QSA does not directly or indirectly provide new water supplies to Southern California. Instead, the QSA changes the distribution of existing Colorado River water supplies among the co-lead agencies, thereby assisting California in reducing its use of Colorado River from an average of 5.0 MAFY to 4.4 MAFY in normal years. QSA implementation will merely ensure that delivery of Colorado River water to the MWD/SDCWA service areas will be identical, at best, to the historical averages for the last 15 years or more.

The diversion patterns of Colorado River water envisioned by the QSA have occurred for decades. For example, MWD has diverted up to an amount to fill the CRA, or approximately 1.3 MAFY. There have also been years where CVWD has diverted up to approximately 450 KAF, and years where IID had reduced its diversions to (or less than) 3.1 MAF.

Cities and counties are the primary agencies responsible for regulating land use through their general plans, specific plans, and zoning regulations. The water supplies being provided and planned for by all four co-lead agencies are consistent with the level of growth projected by regional planning agencies and local general plans, and impacts of projected growth have been disclosed and mitigated in general plan CEQA documents.

CVWD, IID, MWD, and SDCWA do not have the authority to regulate land use. Future growth will occur in accordance with local planning decisions. With the passage of Senate Bill (SB) 610 (Costa) and SB 221 (Kuehl) in 2001, water suppliers such as the co-lead agencies will be required to provide detailed information to cities and counties about current and future water demand and availability in advance of city and county planning decisions on large development proposals.

## ES-8 AREAS OF KNOWN CONTROVERSY

Two areas of potential controversy remain with the implementation of the components of the Proposed Project.

- Concern has been expressed regarding the potential conversion of farmland to non-agricultural use, on either a short-term or long-term basis, as a result of fallowing as a conservation measure or the use of farmland for mitigation or environmental purposes, and the resulting impacts to agricultural resources and the social and economic consequences.
- Concern has been expressed by environmental groups, Salton Sea area residents, the Salton Sea Authority, and other interested parties about the effect of reduced drainage inflows to the Sea resulting from water conservation within the IID water service area. Reduced drainage inflows are expected to accelerate the existing trend of increasing salinity at the Salton Sea, and concern has been expressed that this acceleration will affect implementation of a Salton Sea restoration project.

## ES-9 UNRESOLVED ISSUES

The following issue still needs to be resolved associated with the implementation of the components of the Proposed Project:

- The Salton Sea is an agricultural drainage repository that has no legal rights or entitlements to Colorado River water. Implementation of any project element or mitigation strategy that would make available Colorado River water to the Salton Sea could subject that part of the project to a claim that it is not in compliance with the Law of the River and/or a claim that it is not a reasonable and beneficial use of water.

# AMENDED AND RESTATED

# ADDENDUM TO ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT (EIR/EIS)

## FOR THE IMPERIAL IRRIGATION DISTRICT (IID)

## WATER CONSERVATION AND TRANSFER PROJECT (PROJECT)

September 2003

# TABLE OF CONTENTS

## LIST OF TABLES



## ATTACHMENTS

1 # ACRONYMS AND ABBREVIATIONS

| | |
|---|---|
| California Plan | California's Colorado River Water Use Plan |
| CDFG | California Department of Fish and Game |
| CEQA | California Environmental Quality Act |
| CESA | California Endangered Species Act |
| COC | constituents of concern |
| CVWD | Coachella Valley Water District |
| EIR/EIS | Environmental Impact Report and Environmental Impact Statement |
| ESA | Federal Endangered Species Act |
| FMMP | Farmland Mapping and Monitoring Program |
| HCP | Habitat Conservation Plan |
| IID | Imperial Irrigation District |
| IID/SDCWA Transfer Agreement | Imperial Irrigation District/San Diego County Water Authority Transfer Agreement |
| ITP | Incidental Take Permit |
| KAF | thousand acre-feet |
| KAFY | thousand-acre feet per year |
| LCR | Lower Colorado River |
| LOS | level of service |
| MAF | million acre-feet |
| MAFY | million acre-feet per year |
| msl | mean sea level |
| MWD | Metropolitan Water District of Southern California |
| NOP | Notice of Preparation |
| ppt | parts per thousand |

| | |
|---|---|
| QSA | Quantification Settlement Agreement |
| Reclamation | U.S. Department of Interior Bureau of Reclamation |
| ROI | Region of Influence |
| SDCWA | San Diego County Water Authority |
| TDS | total dissolved solids |
| USFWS | U.S. Fish and Wildlife Service |

# SECTION 1. INTRODUCTION AND PROPOSED PROJECT CHANGES

## 1.1 INTRODUCTION

### 1.1.1 Purpose of Addendum

The purpose of this Amended and Restated Addendum ("Addendum") is to evaluate the environmental impacts associated with minor modifications to the Proposed Project described in the Final Environmental Impact Report and Environmental Impact Statement (Final EIR/EIS or EIR/EIS) for the Imperial Irrigation District (IID) Water Conservation and Transfer Project and Habitat Conservation Plan (HCP), as certified by IID (as the California Environmental Quality Act [CEQA] Lead Agency) in June 2002.

An Addendum to the Final EIR/EIS (December 2002 Addendum) was approved by IID on December 31, 2002, which assessed minor changes to the Proposed Project as of that date. In order to facilitate review of the relevant environmental information, this Addendum amends and replaces the December 2002 Addendum and evaluates all modifications made to the Project between June 2002 and October 2003. Thus, the CEQA assessment for the revised Proposed Project described in this Addendum consists of the certified Final EIR/EIS and this Addendum.

This Addendum amends the Final EIR/EIS only for purposes of CEQA compliance for the actions of IID and other California state and local agencies in connection the Project. The Bureau of Reclamation (Reclamation) filed a separate, integrated version of the Final EIR/EIS on November 1, 2002, with EPA, and has prepared an Environmental Evaluation for purposes of compliance with the National Environmental Policy Act for federal actions required to implement the water transfers associated with the revised Project.

As described in the Final EIR/EIS, the Project may be implemented under one of two possible scenarios. Under the first scenario (IID/SDCWA Transfer Agreement Implementation Only), the terms of the water conservation and transfer transactions are set forth in the Agreement for Transfer of Conserved Water (IID/SDCWA Transfer Agreement) executed by IID and San Diego County Water Authority (SDCWA) in 1998, as amended. Under the second scenario (QSA Implementation), the terms of the water conservation and transfer transactions are set forth in the proposed Quantification Settlement Agreement and related agreements (collectively, the QSA), to be executed by IID, Coachella Valley Water District (CVWD), and Metropolitan Water District of Southern California (MWD). The water transfers by IID included in the Project would implement major components of California's Draft Colorado River Water Use Plan (California Plan) and would provide part of the mechanism for California to reduce its diversions of Colorado River water to the state's normal year apportionment of 4.4 million acre-feet (MAF).

Subsequent to certification by IID of the Final EIR/EIS, the QSA parties and interested federal and state agencies negotiated certain revisions to the terms of the IID/SDCWA Transfer Agreement and the QSA. In addition, consultation by the QSA parties with state and federal agencies including U.S. Fish and Wildlife Service (USFWS) and California Department of Fish

and Game (CDFG) resulted in modifications to the measures required for issuance of Incidental Take Permits (ITPs) under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) for impacts to certain species at the Salton Sea. As a result, minor changes were made to the agreements which were evaluated in the Final EIR/EIS and to the Salton Sea Habitat Conservation Strategy. This Addendum describes and assesses these minor modifications and establishes that none of the conditions requiring preparation of a subsequent or supplemental EIR have occurred.

A separate Addendum to the certified QSA Program EIR has been prepared by the co-lead agencies for that document and is incorporated into this document by reference (refer to Section 1.4).

### 1.1.2 CEQA Requirements

According to Section 15164(a) of the *State CEQA Guidelines*, "[t]he lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."

Section 15162 of the *State CEQA Guidelines* provides that, for a project covered by a certified EIR, preparation of a subsequent or supplemental EIR rather than an addendum is required only if one or more of the following conditions occur:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; or

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

    a. The project will have one or more significant effects not discussed in the previous EIR.

    b. Significant effects previously examined will be substantially more severe than shown in the previous EIR.

    c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of

the project, but the project proponents decline to adopt the mitigation measures or alternatives.

d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternatives.

## 1.2 CONTENTS OF THE ADDENDUM

Section 1 of this Addendum includes a description of the following: the purpose of this Addendum, the previous environmental documentation, the documents incorporated by reference, Project development and events following certification of the Final EIR/EIS, the Project as evaluated in the EIR/EIS, the proposed changes to the Project and mitigation measures identified in the EIR/EIS, and the impacts resulting specifically from the proposed changes.

Section 2 consists of an environmental checklist form focusing specifically on impacts caused by the changes to the Proposed Project. This form is based on the model prepared by the Office of Planning and Research and has been modified to reflect the significance criteria used in the Final EIR/EIS.

Section 3 includes an explanation of each of the answers in the environmental checklist.

## 1.3 PREVIOUS ENVIRONMENTAL DOCUMENTATION

The following environmental documentation was previously prepared for the Project:

1. A Notice of Preparation (NOP) was circulated on September 29, 1999, for a 30-day public review period.

2. An Initial Study was prepared and circulated concurrently with the NOP.

3. A Notice of Completion was filed with California's State Clearinghouse on January 17, 2002, indicating that the Draft EIR/EIS was available for review.

4. The Draft EIR/EIS (Reclamation and IID 2002a) was released on January 18, 2002, and made available for a 90-day public review period, which ended on April 26, 2002.

5. The Final EIR/EIS (Reclamation and IID 2002b) was certified by IID in June 2002. The Draft EIR/EIS is incorporated as part of the Final EIR/EIS.

6. An Addendum to the Final EIR/EIS dated December 2002 was adopted by IID on December 31, 2002. As discussed in Section 1.1, this Addendum includes all relevant information contained in the December 2002 Addendum and replaces the December 2002 Addendum. (December 2002 Addendum)

and Game (CDFG) resulted in modifications to the measures required for issuance of Incidental Take Permits (ITPs) under the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) for impacts to certain species at the Salton Sea. As a result, minor changes were made to the agreements which were evaluated in the Final EIR/EIS and to the Salton Sea Habitat Conservation Strategy. This Addendum describes and assesses these minor modifications and establishes that none of the conditions requiring preparation of a subsequent or supplemental EIR have occurred.

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    a. The project will have one or more significant effects not discussed in the previous EIR.

    b. Significant effects previously examined will be substantially more severe than shown in the previous EIR.

    c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of

the project, but the project proponents decline to adopt the mitigation measures or alternatives.

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## 1.4 DOCUMENTS INCORPORATED BY REFERENCE

Consistent with Section 15150 of the *State CEQA Guidelines,* the following documents were used in the preparation of this Addendum and are incorporated herein by reference:

- CVWD, IID, MWD, and SDCWA. *Addendum to the Program EIR for the Implementation of the Colorado River Quantification Settlement Agreement, September 2003.*
- The Draft EIR/EIS (Reclamation and IID. 2002a.)
- The Final EIR/EIS (Reclamation and IID. 2002b).
- Biological Opinion on the Bureau of Reclamation's Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies, issued by USFWS on December 18, 2002 (12/02 Biological Opinion).
- Biological Assessment of Reclamation's Proposed Section 7(a)(1) Conservation Measures for Listed Species in the Imperial Irrigation District/Salton Sea Areas, Phoenix, AZ, July 2002, together with revisions transmitted by Reclamation to USFWS on October 23, 2002 (2002 Biological Assessment).
- Revised Order WRO 2002-0013 approving IID's and SDCWA's *"Amended Joint Petition for Approval of a Long-Term Transfer of Conserved Water from IID to SDCWA and to Change the Point of Diversion, Place of Use and Purpose of Use Under IID's Permit 7642"*, issued by the State Water Resources Control Board (SWRCB) on December 20 2002 (SWRCB Order).

## 1.5 PROJECT DEVELOPMENT AND EVENTS FOLLOWING CERTIFICATION OF THE JUNE 2002 EIR/EIS

### 1.5.1 2002 State Legislation ~ SB 482.

After certification of the Final EIR/EIS in June, 2002, the California Legislature passed Senate Bill No. 482 (SB 482) in September, 2002. SB 482 was intended to facilitate implementation of the QSA as part of the California Plan, and it adopted certain legislative findings concerning the Salton Sea and the QSA, including the findings that:

- It is important to the state to meet its commitment to reduce its use of Colorado River water to 4.4 million acre-feet per year (MAFY);
- It is important that actions taken to reduce California's Colorado River water use are consistent with the state's commitment to restore the Salton Sea, which is an important resource for the state; and
- The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented, and the water transfers by IID provided for in the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

SB 482 added Section 2081.7 to the Fish and Game Code, which authorized CDFG to issue permits for the take of species resulting from impacts attributable to the implementation of the QSA, subject to certain conditions, including execution of the QSA on or before December 31, 2002. The QSA was not executed by all parties to the QSA prior to that deadline. However, the refined Salton Sea Habitat Conservation Strategy described below was developed in December 2002 to satisfy the conditions to take permits set forth in SB 482, and it was assessed in the December 2002 Addendum to the Final EIR/EIS.

### 1.5.2 Section 7 Consultation Regarding In-Valley ESA/CESA Issues.

The Proposed Project assessed in the Final EIR/EIS includes a Habitat Conservation Plan (HCP) to be processed by IID for approval by USFWS and CDFG pursuant to Section 10 of the federal ESA. It was anticipated that incidental take permits under both ESA and CESA would be issued to permit implementation of the Project based upon the conservation measures provided for in the HCP.

In July, 2002, Reclamation initiated an alternative compliance process by submitting the 2002 Biological Assessment identified in Section 1.4 above to USFWS and requesting consultation pursuant to Section 7 of the federal ESA. Acknowledging in the 2002 Biological Assessment that development of the HCP was "a challenging and time-consuming process", Reclamation intended the proposed species conservation plan described in the 2002 Biological Assessment to offset potential impacts to federally-listed species in the Salton Sea area resulting from the water conservation and transfer projects included in the QSA and to provide an alternative, and more expedited, means to obtain take permits for these transfer projects.

As a result of the consultation process initiated by Reclamation, USFWS issued the 12/02 Biological Opinion (identified in Section 1.4 above) in December 2002. The 12/02 Biological Opinion describes the proposed voluntary conservation proposed by Reclamation, the conservation agreements to be entered into by Reclamation and the California water agencies, and their effects on federally-listed species and their designated critical habitat. The 12/02 Biological Opinion requires the establishment of at least two major roost sites along the California coast to offset the potential take of California brown pelicans at the Salton Sea as a result of a reduction in fish abundance. In addition to the conservation measures proposed by Reclamation, the 12/02 Biological Opinion describes additional measures required by the state of California to minimize the impacts on salinity and inflows to the Salton Sea, referred to in the 12/02 Biological Opinion as the "15-Year Minimization Plan". This Plan is designed to ensure that the water conservation and transfer projects do not materially affect the salinity of the Salton Sea during the first 15 years of the transfers and requires a reduction in the volume of conserved water transferred to SDCWA over these first 15 years.

The refinements to the Salton Sea Habitat Conservation Strategy and the changes to the Project described below are intended to conform to the 12/02 Biological Opinion.

### 1.5.3 SWRCB Order WRO-2002-013.

In December, 2002, after completion of a public hearing procedure, the SWRCB issued the SWRCB Order (identified in Section 1.4 above), approving IID's and SDCWA's Petition for approval of the transfer of conserved water from IID to SDCWA. Relying upon the

environmental assessment set forth in the EIR/EIS certified by IID, the SWRCB incorporated into the SWRCB Order requirements intended to avoid or mitigate the adverse environmental impacts of the transfer to the extent feasible. The mitigation conditions contained in the SWRCB Order include the implementation of all provisions of the Salton Sea Habitat Conservation Strategy outlined in the Final EIR/EIS for a period of 15 years, in order to ensure that the water conservation and transfer projects do not materially affect the salinity of the Salton Sea during the first 15 years of the transfers. The SWRCB Order also requires implementation of the monitoring and mitigation plan for air quality outlined in the Final EIR/EIS, the Tamarisk Scrub Habitat Conservation Strategy, the Drain Habitat Conservation Strategy, the Desert Pupfish Conservation Strategy, and the Razorback Sucker Conservation Strategy. The SWRCB Order concluded that, with the mitigation measures specified in the SWRCB Order, the proposed transfers are in the public interest, will not injure any legal user of water, and will not unreasonably affect fish, wildlife or other in-stream beneficial uses.

The SWRCB Order specifically reserved continuing authority to consider whether it would be appropriate to add, delete or modify the mitigation measures required for the Salton Sea in light of any subsequent legislation that addresses measures necessary to allow the incidental take of federal or state listed species that rely on the Salton Sea (SWRCB Order, p. 87). Moreover, the SWRCB Order specifies that IID may petition the Chief of the Division of Water Rights to modify any of the mitigation measures required by the Order if alternative mitigation measures are found to be equally protective of any species addressed in the Salton Sea Habitat Conservation Strategy (SWRCB Order, p. 89).

The changes included in the revised Project and the refined Salton Sea Habitat Conservation Strategy assessed in this Addendum are intended to be substantially consistent with the requirements of the SWRCB Order. Prior to implementation of the Project, IID will petition the Chief of the Division of Water Rights, pursuant to the terms of the SWRCB Order, to confirm that the mitigation measures in the refined Salton Sea Habitat Conservation Strategy are as equally protective of species as the mitigation measures anticipated by the SWRCB Order.

### 1.5.4 Reduction of Water Deliveries to IID.

On September 9, 2002, IID submitted its water order to Reclamation for the delivery of 3.1 MAF of Colorado River water during 2003. In December, 2002, Reclamation announced that it had reviewed the water order pursuant to the procedure outlined in 43 Code of Federal Regulations (CFR) Part 417 and rejected IID's water order based upon its interpretation of IID's contract for the delivery of Colorado River water. Reclamation approved the delivery of a lesser amount. IID challenged the decision in the United States District Court and was granted a preliminary injunction against enforcement of the cutback. The court stayed the case in April, 2003 pending a new Part 417 review. Reclamation has been conducting a new Part 417 review, which is ongoing. The parties to the litigation have agreed to settle the litigation and terminate the 2003 Part 417 review on execution of a QSA by all parties that would resolve those issues.

### 1.5.5 Status of Interim Surplus Guidelines.

As discussed in Section 1.4.3 of the Draft EIR/EIS, in a Colorado River "surplus year," the Secretary of the Interior provides the surplus water for use in Arizona, Nevada and California.

The Interim Surplus Guidelines (ISG) were developed by the Secretary to provide the conditions under which the Secretary may declare the availability and volume of surplus water for use within those states. The ISG establishes certain benchmarks for reduction of California's Colorado River water use through 2016 and provides that in the event that the benchmarks are not achieved, subsequent surplus determinations will be made on a more conservative basis until California complies with the benchmark reductions. The benchmark years are 2003, 2006, 2009, and 2012.

It is anticipated that MWD will receive water from the Palo Verde Irrigation District (PVID) Land Management, Crop Rotation and Water Supply Program in amounts sufficient to satisfy the ISG benchmarks in 2006, 2009, and 2012. To give further assurance to the other Colorado River Basin states and to the State of California that the ISG benchmarks will be met in the event that the transfers of PVID water to MWD are insufficient to satisfy the applicable ISG benchmarks, the revised QSA terms assessed in this Addendum include an agreement by IID to provide additional water for transfer ("backfill")in order to meet the benchmarks in 2006, 2009, and 2012, as described in Section 1.7 below.

### 1.5.6 2003 State Legislation ~ Conserved Water Required.

The QSA was not executed by all parties on or before the December 31, 2002 deadline established by SB 482, adopted in 2002 (described above). However, the parties to the QSA, representatives of the Executive and Legislative branches of the State of California, the Departments of the Interior and Justice, federal and California wildlife agencies and various other interested parties continued to negotiate mutually acceptable terms of the QSA during 2003. In September, 2003, the parties reached agreement in principle on the major terms of a revised QSA.

In September 2003, the California Legislature passed three bills related to the QSA and restoration of the Salton Sea, Senate Bill Nos. 277, SB 317, and SB 654. Collectively, these bills provide mechanisms for mitigation of the QSA's impacts on the Salton Sea, assure that implementation of the QSA will be consistent with Salton Sea restoration, and provide significant funding for Salton Sea restoration. Revisions to the Project to reflect the terms of these bills are reviewed in Section 1.7.

Senate Bill No. 277 (SB 277) enacted the Salton Sea Restoration Act and establishes the Salton Sea Restoration Fund to be administered by the Director of Fish and Game. Moneys in this Fund shall be expended, upon appropriation by the Legislature, for certain purposes relating to restoration of the Salton Sea and the protection of fish and wildlife dependent on the Sea. This bill also authorizes the Department of Water Resources (DWR) to contract with water suppliers to purchase and sell water to achieve the goals of the Act.

Senate Bill No. 317 (SB 317) amended Section 2081.7 of the Fish and Game Code (adopted by SB 482 in 2002) to state revised conditions to issuance of take permits for the QSA, including the take of fully protected species. These conditions require the QSA to be executed on or before October 12, 2003. They also require enforceable commitments by IID to provide two 800,000 AF increments of conserved water. Section 1.7 below describes the relationship between the Project and the commitment to provide these two increments, described below as the Mitigation Increment and the Restoration Increment.

SB 317 authorizes the Secretary of the Resources Agency to undertake a study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The bill facilitates Salton Sea restoration by requiring submittal of a study identifying the preferred alternative on or before December 31, 2006. This bill also adds Section 1013.5 to the Water Code, which, among other things, provides that IID, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or SB 317, or complying with an order of the Secretary of the Interior, a court or the SWRCB, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

Senate Bill No. 654 (SB 654) amends Section 12562 of the Water Code to extend the deadline for completing the lining of portions of the All American Canal and the Coachella Canal from December 31, 2006 to December 31, 2008, in order to allow additional time to satisfy the requirements for state funding for these projects. In addition, it allocates environmental responsibility among the water agencies and the state for certain environmental mitigation requirements related to implementation of the QSA. The bill provides a mechanism to implement funding of mitigation costs by authorizing CDFG to enter into a joint powers agreement (JPA) with CVWD, IID and SDCWA for the purpose of providing for payment of environmental mitigation costs.

## 1.6 DESCRIPTION OF THE PROPOSED PROJECT ADDRESSED IN THE FINAL EIR/EIS

### 1.6.1 Project Location

The project location includes much of Southern California. The region of influence (ROI) comprises the historic floodplain of the Colorado River below Lake Mead (LCR) and the areas that receive Colorado River water: the IID water service area and the CVWD and MWD service areas, including the SDCWA service area. The service areas include all or part of Ventura, Los Angeles, Orange, San Diego, San Bernardino, Riverside, and Imperial counties. The ROI also includes the LCR and the areas of conveyance and distribution of Colorado River water by these agencies.

### 1.6.2 EIR/EIS Project Description

The Proposed Project involves a water conservation and transfer project that would conserve and transfer up to 300 thousand acre-feet per year (KAFY) of IID's Colorado River entitlement. The water, which could be conserved by a variety of methods, would be transferred by IID to SDCWA, CVWD and/or MWD. The terms of the water conservation and transfer transactions are set forth in the Agreement for Transfer of Conserved Water (IID/SDCWA Transfer Agreement) executed by IID and SDCWA in 1998, as amended, and the proposed QSA, to be executed by IID, CVWD, and MWD. These transfers, which are to remain in effect for up to 75 years, will facilitate efforts to reduce California's diversions of Colorado River water in normal years to its annual 4.4 million acre-feet per year (MAFY) apportionment.

The Final EIR/EIS evaluated the Proposed Project under the following two implementation scenarios:

- The transfer by IID of 130 to 300 KAFY to SDCWA (All Conservation Measures) (IID/SDCWA Transfer Agreement Implementation Only)

- The transfer by IID of up to 200 KAFY to SDCWA and up to 100 KAFY to CVWD and/or MWD (QSA Implementation)

The Proposed Project also includes implementation of a HCP to address impacts to covered species and habitats within the IID water service area, the right-of-way of the All American Canal and Salton Sea.

## 1.7 CHANGES TO THE PROPOSED PROJECT

This section addresses changes made to the proposed project since certification of the EIR/EIS in June 2002. It specifically addresses changes to the HCP and the Salton Sea Habitat Conservation Strategy and changes to the IID water conservation and transfer project reflected in changes in the terms of the agreements comprising the QSA. The description of each key change below is followed by an italicized discussion of why it is not considered to be a substantial change to the Project which would require preparation of a subsequent EIR.

### 1.7.1 Changes to the Habitat Conservation Plan / Salton Sea Habitat Conservation Strategy

After the EIR/EIS was certified, discussions among USFWS, CDFG, the QSA parties and interested state and federal agencies, including Reclamation (Reclamation), resulted in the refinement of the Salton Sea Habitat Conservation Strategy presented in the Final EIR/EIS. The Salton Sea Habitat Conservation Strategy, as presented in the Final EIR/EIS (refer to Master Response 3.5 in the Final EIR/EIS [Reclamation and IID 2002b]), included the provision of mitigation water to the Salton Sea sufficient to offset the reduction in inflow to the Salton Sea caused by the Proposed Project and to maintain salinity in the Sea at or below 60 parts per thousand (ppt) until the year 2030.

Under the refined Salton Sea Habitat Conservation Strategy, mitigation water will be provided to the Salton Sea for the first 15 years of the Proposed Project to offset reductions in inflow due to the transfer of water to SDCWA. The reduction of inflows to the Salton Sea attributable to the approximately 240 KAF of water conserved via efficiency conservation measures during the first fifteen years and transferred to CVWD will not be offset by providing mitigation water to the Salton Sea. However, it is anticipated that up to one-third or 80 KAF of water transferred to and used during the first 15 years within the CVWD service area may return as drainage inflow to the Salton Sea, offsetting the inflow reduction due to the transfers to CVWD. If CVWD declines to acquire the amounts available to it, MWD has an option to acquire them, but acquisition by MWD of portions of the First 50 KAF Increment during the first 15 years is subject to subsequent environmental assessment (see Table 1-1, Section E). Under the refined Salton Sea Habitat Conservation Strategy, the amount of mitigation water provided to the Salton Sea will be substantially equivalent to the reduction of inflow to the Salton Sea attributable to the conservation and transfer of water for the first 15 years of the Project term and salinity will be maintained in the Salton Sea at or below 60 ppt until the year 2019.

The refined Salton Sea Habitat Conservation Strategy was developed in December, 2002 to reflect the terms of SB 482 adopted in September 2002 (described above) and the requirements

of the 2002 BO issued by USFWS in December 2002. Pursuant to Fish and Game Code Section 2081.7(c), enacted as part of SB 482, CDFG reviewed the revised QSA terms and the implementation of the refined Salton Sea Habitat Conservation Strategy and prepared Draft Findings (DFG 2002), which concluded that implementation of the revised QSA and the revised Salton Sea Habitat Conservation Strategy, during the first 15 years of implementation of the revised QSA: (1) will not result in a material increase in projected salinity levels at the Salton Sea; and (2) will not foreclose alternatives for reclamation of the Salton Sea as summarized in Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372).

As described above in Section 1.5.3, the SWRCB Order also requires the implementation of mitigation measures relating to the Salton Sea, including measures to meet the mean modeled future Baseline salinity trajectory of the Salton Sea for the first 15 years of the Project. The SWRCB Order specifically reserved continuing authority to consider whether it would be appropriate to add, delete or modify the mitigation measures required for the Salton Sea in light of any subsequent legislation that addresses measures necessary to allow the incidental take of federal or state listed species that rely on the Salton Sea (SWRCB Order, p. 87). Moreover, the SWRCB Order specifies that IID may petition the Chief of the Division of Water Rights to modify any of the mitigation measures required by the Order if alternative mitigation measures are found to be equally protective of any species addressed in the Salton Sea Habitat Conservation Strategy (SWRCB Order, p. 89). Prior to implementation of the Project, IID will petition the Chief of the Division of Water Rights, pursuant to the terms of the SWRCB Order, to confirm that the mitigation measures in the refined Salton Sea Habitat Conservation Strategy are as equally protective of species as the mitigation measures anticipated by the SWRCB Order.

*The refinement of the length of time that mitigation water will be provided to the Salton Sea is not considered to be a substantial change to the Proposed Project for the following reasons:*

- *Projections made by the Salton Sea Accounting Model are based on a number of assumptions including inflows to the Salton Sea, evaporation rates and salt loadings. The model output provides projections that have statistical confidence levels spanning a number of years. For example, under the Baseline, the Salton Sea is projected to reach 60 ppt (the assumed threshold for substantial loss of the reproductive capability of fish in the Salton Sea) between the years 2018 and 2030. The provision of mitigation water to the Salton Sea for 15 years under the refined Salton Sea Habitat Conservation Strategy would offset inflow reductions until the lower end of that confidence range, year 2018. The refined Salton Sea Habitat Conservation Strategy is projected to result in the salinity of the Sea reaching 60 ppt between the years 2016 and 2021. The confidence interval associated with the Baseline nearly encompasses the confidence interval for the refined Salton Sea Habitat Conservation Strategy, and the difference in the mean year in which the salinity is projected to exceed 60 ppt is small (i.e., 4 years). Thus, implementation of the refined Salton Sea Habitat Conservation Strategy would have an effect on fish-eating birds at the Sea which is similar to projected Baseline conditions. While the benefits identified with implementation of the Salton Sea Habitat Conservation Strategy as outlined in the EIR/EIS would not be fully realized, the refined strategy would not result in habitat conditions substantially different from the projected Baseline conditions and, therefore, would not result in a new or more severe impact to piscivorous birds.*

- *Salton Sea salinity levels of 60 ppt have been considered by many as the level where reproduction levels of fish and invertebrates substantially decline, ultimately reducing population levels. The*

*60 ppt level is not an absolute level for several reasons. First, the salinity in the Sea is not homogenous, and there will be areas where salinity is lower and fish populations will persist. Also, the reaction of fish and invertebrates to increased salinity will vary, and it is reasonable to assume that some invertebrates and fish would survive in areas of higher salinity for a longer period of time. Therefore, the decline in fish populations and the related loss of fish-eating bird populations will likely be more gradual than the 60-ppt salinity level would indicate.*

- *Salinity levels are not equally distributed throughout the Salton Sea, and it is anticipated that areas of the Salton Sea, particularly at the mouths of the New and Alamo Rivers, will continue to support fish populations, and thus a food source for piscivorous birds, beyond the year when the average salinity of the Salton Sea is projected to exceed 60 ppt.*

*The modifications to the Salton Sea Habitat Conservation Strategy included as part of the Proposed Project are not expected to result in any new significant effects or environmental effects substantially more severe than those described in the Final EIR/EIS.*

### 1.7.2 Changes to the Water Conservation and Transfer Component of the Project : QSA Implementation Scenario

The proposed changes to the Water Conservation and Transfer component of the Proposed Project are applicable to the QSA Implementation scenario. The changes are reflected in modifications to the terms of the agreements comprising the QSA, as set forth in the revised QSA documents identified on Attachment 1 to this Addendum. The revised QSA documents will be posted on IID's website (www.iid.com). The Final EIR/EIS included summaries of the QSA and the IID/SDCWA Transfer Agreement. Those summaries and the description of the Project included in the Addendum to the EIR/EIS dated December 2002 are superseded by the revised Project described in this Addendum and the revised documents identified on Attachment 1.

The changes resulted from negotiations among the QSA parties, with the participation of representatives of the Executive and Legislative branches of the State of California, the Department of Interior, federal and California wildlife agencies and various other interested parties. The changes were designed to reflect the terms of the new state legislation described above and to accommodate state goals with respect to restoration of the Salton Sea. The changes were also designed to conform to the requirements of the 2002 Biological Opinion and the SWRCB Order.

Table 1-1, Comparison of QSA Terms Identified in the EIR/EIS and Proposed Changes, summarizes the changes to the QSA terms which are assessed in this Addendum. The description of each key change below is followed by an italicized discussion of why it is not considered to be a substantial change to the Project which would require preparation of a subsequent EIR.

*Changes in Water Delivery Schedule and Term*

- Changes have been made to the water delivery ("ramp-up") schedule for the transfer of conserved water from IID to SDCWA and from IID to CVWD. Table 1-2, Comparison of Original and Revised QSA Delivery Schedules, summarizes these changes to the ramp-

up schedule by calendar and agreement year. This ramp-up schedule is provided for illustrative purposes. Minor adjustments may be made over the term of implementation of the QSA. In general, under the revised ramp-up schedule, there is a decrease in the annual amounts of water transferred to SDCWA during the first 18 years and a slight increase in years 19 and 20. There is a total decrease of 90 thousand acre-feet (KAF) in the annual amounts of water transferred to CVWD during the first 15 years and an equivalent increase during years 16 through 45. IID has the discretion to pick the conservation methods used to conserve water for transfer, provided that the conservation plan is consistent with the refined Salton Sea Habitat Conservation Strategy (described below) and the terms and conditions of applicable state and federal permits and approvals. It is anticipated that IID would conserve water principally, but not exclusively, through fallowing for water transferred to SDCWA during the first 15 years of the Project.

Table 1-3, Revised QSA Delivery Schedule By Conservation Method, also shows the revised water delivery schedule for the QSA, but, in addition, it shows the amount of water each year that would be generated by efficiency conservation measures for transfer and by fallowing for transfer and for the provision of mitigation water under the refined Salton Sea Habitat Conservation Strategy (described below). Under the revised delivery schedule a maximum of approximately 25,000 acres of annual fallowing would be required to generate 150 KAF for transfer and mitigation water, assuming conservation of approximately 6 AF of water per acre of land fallowed.

*This change in the delivery schedule does not represent a substantial change from the schedule that was described in the EIR/EIS because the aggregate amount of water transferred over the 75-year Project term would be substantially as described in the EIR/EIS. The fallowing of approximately 25,000 acres is well below the total amount of fallowing evaluated in the EIR/EIS and, therefore, the revised ramp-up schedule would not result in new significant impacts or increase the severity of impacts associated with fallowing identified in the EIR/EIS.*

- The initial term of the IID/SDCWA Agreement would be 45 years beginning in the year 2003 or 2004 instead of 2002. If both parties consent, the initial term could be extended for a renewal term of 30 years.

*Delaying the start date of this agreement by one or two years does not constitute a substantial change to the Proposed Project, because it defers or delays the impacts of the transfers and does not create new or substantially more severe environmental impacts. The EIR/EIS assessed a Project term of up to 75 years.*

- Following additional analyses and financial agreements, including completion of any required environmental review, SDCWA may elect, at no cost to IID, to pursue the East Mesa Well Field as an alternative source for mitigation water to implement the refined Salton Sea Habitat Conservation Strategy. If it does, IID would increase its annual deliveries to SDCWA by 2/3 of each acre-foot of East Mesa developed water and use the remaining 1/3 acre-foot to permit reductions in fallowing.

*Use of groundwater in the East Mesa area was identified as an alternative mitigation measure to offset the reduction of inflow into the Salton Sea caused by the Project. The feasibility and environmental effects of utilizing this alternative water source have not been determined,*

*however, and cannot feasibly be assessed at this time; hence, it is not proposed as a mitigation measure for Project impacts at this time. Subsequent environmental analysis would be required in the future should it be proposed for implementation.*

- "Early Water" transfers to SDCWA would be postponed until 2020. The Early Water transfers to MWD have been eliminated.

  *Under the terms of the QSA analyzed in the EIR/EIS, the Early Water transfers provided for IID to conserve and transfer water to SDCWA in the following years and amounts: 2.5 KAF in 2005; 5 KAF in 2006; and 2.5 KAF in 2007. MWD would also receive an option to acquire water conserved by IID in the following years and amounts: 2.5 KAF in 2005; 5 KAF in 2006; and 2.5 KAF in 2007. Postponing the "Early Water" transfers to SDCWA until 2020 and eliminating the "Early Water" transfers to MWD would not substantially change the Proposed Project because this amount of water is small in comparison with the aggregate amount transferred and the aggregate volume that were analyzed in the EIR/EIS would not change. The change in implementing the Early Water transfers will not result in new or substantially more severe environmental impacts.*

*Interim Surplus Guidelines Backfill*

One of the purposes of the QSA is to assist in satisfying the provisions of the ISG and, thus, to assist California to be eligible to receive special surplus water made available by the Department of the Interior under the ISG. As described above, the ISG establishes certain benchmarks for the amount of water to be transferred from agricultural areas to urban areas. It is anticipated that MWD will receive water from the PVID Land Management, Crop Rotation and Water Supply Program, which will help satisfy the ISG benchmarks in 2006, 2009 and 2012. To the extent that the PVID water is insufficient to satisfy the applicable ISG benchmark, IID has agreed that it will provide additional water for transfer ("backfill") in order to offset the deficit in each of the three benchmark years, provided that the maximum amount in each year shall not exceed the amount shown in Table 1-4 below.

IID has the discretion to determine the method of conservation used to generate ISG backfill water, provided that the cumulative reduction in inflows into the Salton Sea in the three benchmark years will not exceed 72,500 AF.

*The Salton Sea Accounting Model was used to evaluate the potential effect of the additional maximum reduction of 72,500 AF potentially required to fulfill the ISG benchmarks. The purpose of the analysis was to determine if the aggregate additional reduction in inflow during 2006, 2009, and 2012 would accelerate or make more substantial, impacts associated with Salton Sea salinity levels, elevation and exposed surface area. These effects could result in accelerated or additional impacts to piscivorous birds, recreation resources and air quality.*

*To evaluate the significance of the reduction in inflow, the 72,500 KAF amount was allocated among the three benchmark years under three different scenarios to determine the worst case condition for transfer of the ISG backfill amounts. The first scenario assumed a proportional reduction of inflows to the Salton Sea of 12,500 KAF in 2006, 25,000 KAF in 2009, and 35,000 KAF in 2012, for a total reduced inflow of 72,500 KAF. The second scenario attempted to create a worst-case analysis for salinity impacts by increasing the impacts in the earlier benchmark*

*years when it is anticipated that increased salinity would have the greatest effect on acceleration of the salinization of the Sea. It assumed all efficiency conservation was used to generate the ISG backfill amount in 2006, and all fallowing in 2012, with the remaining reductions to inflow occurring in 2009. The resulting reductions to inflow modeled would be 25,000 KAF in 2006, 24,170 KAF in 2009, and 23,330 KAF in 2012. A third scenario considered that the maximum reduction would occur during one year. Because of the ISG backfill limitations in 2006 and 2009, the maximum reduction in inflow of 72,500 was allocated to 2012.*

*The results for each of the three scenarios (included as Attachment 2) did not vary significantly and did not result in the worsening or acceleration of any impacts already identified in the EIR/EIS or the identification of new impacts as described below:*

***Salinity:*** *Increased salinity in the Salton Sea results in effects on the Sea's fish population which in turn impact piscivorous birds, specifically the federal and state endangered brown pelican. Impacts to the pelican population were evaluated and conservation measures included in the 2002 Biological Opinion. To determine impacts to the pelican, the USFWS assumed that at salinity levels between 50 ppt and 60 ppt, some portion of the fish population would be lost resulting in a loss of 10 percent of the pelican population. At 65 ppt, it was assumed that most of the remaining fish population would be eliminated and that the remaining 90 percent of the pelican population would be lost. Using this methodology a total impact of 12,383 pelican use-years was determined to result from implementation of the Proposed Project with the refined Salton Sea Habitat Conservation Strategy. (Pelican use-years are based on the average number of pelicans based on available surveys, multiplied by the number of years the pelicans would survive under Baseline salinity projections.) With the additional reduction in inflow due to the ISG backfill amounts, total pelican impacts would increase very slightly.*

*Analysis of the three ISG backfill scenarios resulted in impacts of 12,428, 12,406 and 12,428 pelican use-years, respectively. The brown pelican conservation measures identified in the 2002 Biological Assessment and the 12/02 Biological Opinion produced a benefit (i.e., the number of gained pelican-years of roosting and foraging) of 13,607 pelican use-years. Therefore, although the ISG backfill would result in a very slight increase in pelican impacts, the conservation measures planned for are more than sufficient to mitigate for the slight increase.*

***Elevation:*** *Impacts associated with elevation changes at the Salton Sea are associated with the stranding of recreation facilities. Previous analysis included in the EIR/EIS determined that facilities such as boat launches would be impacted when the Sea reaches elevation -230 feet msl. The additional reduction in inflow due to the ISG backfill amounts would not accelerate the timing of elevation decline at the Salton Sea.*

***Exposed Surface Area:*** *The decline in the elevation of the Salton Sea exposes surface area potentially resulting in significant air quality impacts from dust emissions. The EIR/EIS included a comprehensive analysis of the potential for air quality impacts from the Project. The EIR/EIS also included a detailed air quality mitigation plan designed to address those impacts to the extent feasible. No additional surface area would be exposed with the reduced inflow from the ISG Backfill amounts. The total amount of water transferred during the Project term in the revised Project is 1,085 KAF less than the amount evaluated in the EIR/EIS. Therefore, the amount of acreage exposed under the revised Project is less than that originally evaluated and no additional air quality impacts are expected.*

*In summary, the additional reduction of 72,500 AF, in the aggregate over the three benchmark years, does not trigger the preparation of a subsequent EIR/EIS.*

*Conserved Water Referenced in 2003 State Legislation*

As described above, in September 2003, the California Legislature approved three related bills (SB 317, SB 277 and SB 654) that facilitate implementation of the QSA, including the IID/SDCWA Water Conservation and Transfer Project, as well as restoration of the Salton Sea. SB 317 amends Fish & Game Code Section 2081.7 to permit CDFG to authorize the take of certain species within the Imperial Valley and in and around the Salton Sea, as a result of aspects of the Proposed Project, subject to certain conditions. These conditions include the transfer by IID of two 800 KAF increments of conserved water (a total of 1.6 MAF) to DWR, which are to be generated by conservation methods selected by IID, as described in Section 2081.7(c)(1) and (2). The relationship between these two increments of water and the environmental analysis set forth in this Addendum is discussed below.

*Mitigation Increment*

One increment of 800 KAF, described in Fish and Game Code Section 2081.7(c)(2) and referred to in this Addendum as the "Mitigation Increment," is to be conserved (by conservation methods selected by IID) and transferred by IID to DWR during the first 15 years of the QSA term. In order to facilitate implementation of the QSA and the refined Salton Sea Habitat Conservation Strategy, however, the contractual agreements included as part of the revised QSA provide for the conservation of the Mitigation Increment by IID and the delivery of the Mitigation Increment to the Salton Sea in accordance with the refined Salton Sea Habitat Conservation Strategy (described below). DWR has agreed that the Mitigation Increment will be delivered to the Salton Sea for such purpose (and not transferred to DWR) unless and until the conditions precedent to a change in use of the Mitigation Increment have been satisfied as described below. Thus, implementation of Section 2081.7(c)(2) in this manner will not have any effect on the environmental impacts of the Proposed Project or the mitigation of those impacts.

*This change does not trigger the preparation of a subsequent EIR for the Project because the Mitigation Increment merely provides a mechanism to implement the refined Salton Sea Habitat Conservation Strategy described in this Addendum. The Mitigation Increment would be conserved in a manner consistent with the conservation methods envisioned in the Final EIR/EIS and will be delivered to the Salton Sea as required under the refined Salton Sea Habitat Conservation Strategy.*

SB 277, enacted concurrently with SB 317, establishes the Salton Sea Restoration Act (Act). The Act states the Legislature's intent 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 Act establishes the Salton Sea Restoration Fund, administered by the Director of Fish and Game. The Act provides that Salton Sea restoration will be based on a preferred alternative to be developed as a result of a restoration study and alternative selection process described in Fish and Game Code Section 2081.7, as amended by SB 317.

It is anticipated that, at some point during the first 15 years of the QSA term, DWR may elect to change the use of the balance of the Mitigation Increment (i.e., that portion of the 800 KAF Mitigation Increment which has not previously been delivered to the Salton Sea pursuant to the refined Salton Sea Habitat Conservation Strategy), and require the transfer of this balance to DWR, based upon the needs of the approved Salton Sea restoration plan. Since a restoration plan has not been identified, assessed or approved, however, the use or transfer of the Mitigation Increment in any manner inconsistent with the refined Salton Sea Habitat Conservation Strategy is speculative and cannot feasibly be assessed for environmental impacts at this time.

In order for DWR to change the use of the balance of the Mitigation Increment at any time during the 15-year period during which it is committed to the Salton Sea pursuant to the refined Salton Sea Habitat Conservation Strategy, the following conditions must be satisfied, without any cost or liability for IID: (1) the Secretary of the Resources Agency, in conjunction with CDFG, DWR, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, must have completed a restoration study to determine a preferred alternative for Salton Sea restoration, as described in Section 2081.7(e)(1), together with the environmental assessments required for the restoration plan under applicable law; (2) the Secretary of the Resources Agency must have determined that the transfer of the Mitigation Increment balance is consistent with the preferred alternative for Salton Sea restoration, as required by Section 2081.7(e)(2)(C); (3) the Secretary of the Resources Agency (or DWR) must have completed and certified an appropriate environmental assessment of the impacts of conservation of the Mitigation Increment balance by IID (by conservation methods selected by IID) and of the use and transfer of the Mitigation Increment balance as proposed by DWR and also must have obtained all necessary governmental permits and approvals therefore (including, to the extent required, the approval of CDFG, USFWS and SWRCB), without the requirement for IID to provide any mitigation water to the Salton Sea in connection with the transfer of the Mitigation Increment balance; and (4) the Secretary of the Resources Agency (or DWR) must have assumed responsibility for all environmental mitigation measures required under the environmental assessments and the permits and approvals applicable to the conservation, use and transfer of the Mitigation Increment balance, including impacts on Salton Sea salinity; and (5) the Secretary of the Resources Agency (or DWR) must have relieved IID and the QSA participating agencies from, or have assumed, their respective obligations to implement the Salton Sea Habitat Conservation Strategy and other mitigation measures and permit conditions related to the Proposed Project that are facilitated by the delivery of the Mitigation Increment to the Salton Sea.

*This change does not trigger the preparation of a subsequent EIR/EIS for the Project because the use of the Mitigation Increment in any manner inconsistent with the refined Salton Sea Habitat Conservation Strategy is speculative and cannot feasibly be assessed at this time. An assessment of the impacts of the conservation, transfer and use of the Restoration Increment in any manner inconsistent with the refined Salton Sea Habitat Conservation Strategy is not included in the EIR/EIS or this Addendum. Subsequent environmental analysis under the direction of the Secretary of the Resources Agency would be required in order to change the use of this water.* In addition, *the Salton Sea restoration is not part of the Proposed Project. The revised QSA will*

*make available water and funding, under specified conditions, for Salton Sea restoration activities, but specific restoration activities are speculative at this time and will require future environmental analysis under the direction of the Secretary of the Resources Agency.*

*Restoration Increment*

The second 800 KAF increment, described in Fish and Game Code Section 2081.7(c)(1) and referred to in this Addendum as the "Restoration Increment," is to be conserved (by conservation methods selected by IID) and transferred by IID to DWR, in exchange for $175/per acre-foot, as adjusted annually for inflation. The contractual agreements included in the revised QSA provide that IID is committed to transfer the Restoration Increment in accordance with a mutually agreed schedule set forth in the revised QSA documents, in order to satisfy the transfer requirement set forth in Section 2081.7(c)(1); however, the 800 KAF amount of the Restoration Increment will be reduced by the amount of conserved water provided by IID to backfill shortages in meeting the ISG benchmarks pursuant to the revised QSA terms (described above).

In order to acquire any portion of the Restoration Increment, however, the following conditions must be satisfied, without any cost or liability for IID: (1) the Secretary of the Resources Agency, in conjunction with CDFG, DWR, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee must have completed a restoration study to determine a preferred alternative for Salton Sea restoration, as described in Section 2081.7(e)(1), together with the environmental assessments required for the restoration plan under applicable law; (2) the Secretary of the Resources Agency must have determined that the transfer of the Mitigation Increment balance is consistent with the preferred alternative for Salton Sea restoration; (3) the Secretary of the Resource Agency or DWR must have completed an appropriate environmental assessment of the impacts of the conservation of the Restoration Increment by IID (by conservation methods selected by IID) and of the use and transfer of the Restoration Increment as proposed by DWR and must have obtained all governmental permits and approvals required therefore; and (4) DWR must have assumed the responsibility for all environmental impacts, including Salton Sea salinity impacts, related to the conservation, use or transfer of the Restoration Increment, and the responsibility for performance of all mitigation measures for such impacts required under the environmental assessments and the related permits and approvals.

*This change does not trigger the preparation of a subsequent EIR/EIS for the Project because, as discussed above, the conservation, transfer and use of the Restoration Increment would require future environmental analysis by the Secretary of the Resources Agency or DWR prior to implementation of the conservation or transfer of this increment. An assessment of the conservation, transfer and use of the Restoration Increment is not included in the EIR/EIS or this Addendum. The Salton Sea restoration is not part of the Proposed Project; rather, the QSA will make available water and funding, under specified conditions, for Salton Sea activities. Specific restoration activities are speculative at this time and will require future environmental analysis by the Secretary of Resources. Since the Salton Sea restoration plan has not been identified, assessed or approved, the environmental effects of the conservation, transfer and use of the Restoration Increment are speculative and cannot feasibly be assessed at this time.*

*Creation of Local Entity*

A local entity would be established by IID to administer the receipt and disbursement of socioeconomic impact payments made by SDCWA and IID.

Creation of a local administrative entity is not considered a substantial change to the Proposed Project. It would cause no new or substantially more severe environmental impacts and would facilitate the receipt and disbursement of socioeconomic impact payments made by SDCWA and IID.

### 1.7.3 Changes in Implementation of the HCP and Incidental Take Permitting Approach

In the Final EIR/EIS, the Proposed Project included implementation of an HCP to support issuance of an incidental take permit under Section 10(a)(1)(B) of the federal ESA and Section 2081 of the California Fish and Game Code for impacts to species and habitat within the Imperial Valley and in and around the Salton Sea. The proposed HCP addressed incidental take of 95 listed and unlisted fish, wildlife and plant species that could result from implementation of the water conservation and transfer program as well as activities required to maintain and operate IID's water conveyance and drainage system. The HCP consisted of the following habitat and species specific strategies:

- Salton Sea habitat
- Drain habitat
- Tamarisk scrub habitat
- Desert habitat
- Burrowing owl
- Desert pupfish
- Razorback sucker
- Other covered species

The HCP anticipated in the EIR/EIS will not be completed prior to commencement of water transfers under the Proposed Project described in this Addendum. Under the revised Project, compliance with the federal ESA for impacts to species and habitat in the Imperial Valley and in and around the Salton Sea initially will be provided through the consultation process conducted by Reclamation with USFWS in 2002 pursuant to Section 7 of the federal ESA. As a result of this consultation, USFWS issued the 12/02 Biological Opinion (described above) to Reclamation for implementation of conservation measures for California brown pelican, Yuma clapper rail, desert pupfish, and southwestern willow flycatcher. The biological conservation measures were developed to mitigate the effects of implementing the Proposed Project on listed species. USFWS concluded that the implementation of the conservation measures is not likely to adversely affect southwestern willow flycatcher, least Bell's vireo, bald eagle, California least tern, and razorback sucker. For desert pupfish, Yuma clapper rail and California brown pelican, USFWS concluded that implementation of the conservation measures concurrent with interrelated and interdependent activities may affect but is not likely to jeopardize these species. USFWS issued an incidental take statement for desert pupfish, Yuma clapper rail and California brown pelican. The 12/02 Biological Opinion will remain in effect until the water agencies develop an HCP and obtain incidental take authorization pursuant to Section 10 (described below).

Since modification of the Project, including the provision for IID to conserve additional water for backfill of the ISG, and development of the refined Salton Sea Habitat Conservation Strategy described in this Addendum, informal consultations have occurred with USFWS. USFWS has reviewed the revised Project and the refined Salton Sea Habitat Conservation Strategy and has determined that the conservation measures contained in the 12/02 Biological Opinion are sufficient. There confirmation of the sufficiency of the 12/02 Biological Opinion is documented in the letter from USFWS included as Attachment 3.

Under the Final EIR/EIS, the anticipated HCP was expected to support issuance of an incidental take permit under Section 2081 of the California Fish and Game Code for the 95 species covered in the HCP, which would provide CESA compliance. Under the revised Project, it is expected that CDFG will authorize incidental take through Section 2081 for impacts that could result from implementation of the water conservation and transfer component of the Project to state-listed species only in the Imperial Valley and at the Salton Sea. This permit will remain in effect until SDCWA, CVWD and IID complete the HCP/NCCP process described below.

In addition to the initial compliance processes described above, the terms of the QSA provide that SDCWA and CVWD, in consultation and collaboration with IID, will use their best efforts to prepare an HCP/Natural Community Conservation Plan (NCCP) and obtain an incidental take permit from USFWS under Section 10 of the federal ESA and an incidental take permit from CDFG through the Natural Communities Conservation Planning Act by December 31, 2006. The HCP/NCCP will address the same covered activities as the HCP considered in the Final EIR/EIS but could differ in the species covered by the HCP/NCCP, the specific mitigation measures and the duration of the permits. The NCCP will support issuance of an NCCP permit by CDFG allowing incidental take of the listed and unlisted species in the Imperial Valley and at the Salton Sea.

*The new incidental take permitting approach for the revised Project will not result in any new significant effects or environmental effects that are substantially more severe than those described in the Final EIR/EIS. Potentially significant impacts to biological resources from implementation of the water conservation and transfer component of the Project identified in the Final EIR/EIS were as follows:*

- *Increased salinity in the drains could alter drain vegetation and affect wildlife, including special-status species*
- *Changes in water quality in the drains could affect wildlife, including special-status species*
- *Reduced flows in the drains could affect desert pupfish*
- *Reduced fish abundance in the Salton Sea would affect piscivorous birds*
- *Increased salinity could isolate drains that support desert pupfish.*

*The revised Project still includes the implementation of the Salton Sea Habitat Conservation Strategy which as described above has been refined to include the provision of mitigation water to the Salton Sea to avoid salinity impacts to the Sea for 15 years as required by the SWRCB Order and the 12/02 Biological Opinion. Thus, potentially significant effects to piscivorous birds from increases in salinity will be minimized. The remaining potentially significant impacts will be mitigated through implementation of requirements in the 12/02 Biological Opinion and the SWRCB Order.*

*The biological conservation measures that Reclamation and its conservation partners will implement under the 12/02 Biological Opinion were developed to address potential effects from the conservation and transfer of up to 300 KAFY. The clapper rail conservation measures consist of creating high quality managed marsh habitat to compensate for the loss of cattail vegetation in drains from increased salinity as well as potential toxicological effects from increases in the selenium concentration of drainwater. Creation of this habitat also will mitigate for impacts to other wetland-associated species that could be affected by changes in water quality or habitat availability in the drains as a result of water conservation. The conservation measures for desert pupfish in the 12/02 Biological Opinion are substantially the same as the measures in the HCP and, therefore, no new or substantially more severe impacts to desert pupfish would be expected beyond that described in the Final EIR/EIS. In addition to the requirements of the 12/02 Biological Opinion, the SWRCB Order requires implementation of additional mitigation measures for biological resources. These additional mitigation measures were derived from the Draft HCP and consist of implementing the Tamarisk Scrub Habitat Conservation Strategy and Drain Habitat Conservation Strategy of the HCP. Implementation of these strategies will further ensure that potentially significant impacts to biological resources resulting from the water conservation and transfer project will be mitigated to less than significant.*

### 1.7.4 Changes to Mitigation Measures

The following mitigation measure, which was developed in consultation with CDFG and USFWS and is included in the 12/02 Biological Opinion, was added to the Proposed Project to minimize impacts to Brown Pelicans:

*Brown Pelican Roosting Habitat.* Two major roost sites for the brown pelican will be constructed along the Southern California Coast. A major roost site is defined as a site supporting at least 100 pelicans during June through October based on maximum counts. The roost sites will be sized to accommodate up to 1,000 pelicans each. The roost sites are to be installed and functioning by 2018 and demonstrated to support at least 100 pelicans each, and at least 1,200 in combination, which has been determined by CDFG to be an appropriate measure of mitigation to offset impacts to brown pelicans at the Salton Sea. The roost sites will be maintained through 2048. This is a long-term measure that will maintain the brown pelican populations in Southern California and will replace habitat lost at the Salton Sea because of increased salinity and the resultant loss of food source. This measure will provide long-term mitigation for this species even after the salinity of the Salton Sea reaches levels when food sources for the species are substantially reduced. It should be noted that permits from other agencies, such as the U.S. Army Corps of Engineers and U.S. Coast Guard, will be required to implement this mitigation measure.

Addendum to the Final Program Environmental Impact Report

# Implementation of the Colorado River Quantification Settlement Agreement

September 2003

Coachella Valley Water District
Imperial Irrigation District
The Metropolitan Water District of Southern California
San Diego County Water Authority

Addendum to the Final Program Environmental Impact Report

# Implementation of the Colorado River Quantification Settlement Agreement

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# SECTION 1. INTRODUCTION AND CHANGES TO THE PROPOSED PROJECT AND MITIGATION MEASURES

## 1.1. INTRODUCTION

### Purpose of Addendum

The purpose of this Addendum is to evaluate the environmental impacts associated with project modifications to the previously certified Quantification Settlement Agreement (QSA) Final Program Environmental Impact Report (PEIR). The QSA (Proposed Project) would implement major components of California's draft Colorado River Water Use Plan (California Plan) and provide part of the mechanism for California to reduce its diversions of Colorado River water to the state's normal year apportionment of 4.4 million acre-feet (MAF). The QSA components would provide a framework for conservation measures and water transfers for a period of up to 75 years. The Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), and The Metropolitan Water District of Southern California (MWD) are signatories to the QSA.

CVWD, IID, MWD, and the San Diego County Water Authority (SDCWA), the QSA participating agencies, entered into an agreement to be co-lead agencies for the preparation of a PEIR. The PEIR was certified by each of the four co-lead agencies in June 2002. Subsequent to the certification of the PEIR, the co-lead agencies entered into negotiations to finalize the terms of the QSA. This Addendum describes the modifications in the QSA subsequent to the certification of the PEIR and establishes that none of the conditions requiring preparation of a Subsequent EIR have occurred.

An Addendum to the PEIR was approved by the co-lead agencies in December 2002 (December 2002 Addendum), evaluating changes made to the QSA as of that date. This Addendum carries forward all relevant information from the December 2002 Addendum, and evaluates all modifications made to the QSA between June 2002 and September 2003. The certified PEIR and this Addendum together constitute the CEQA documentation supporting the QSA approval.

To implement the QSA, it will be necessary for the co-lead agencies to execute a number of related agreements in addition to the QSA. These agreements cover administrative or fiscal activities needed to implement the QSA, and have no potential to cause physical environmental impacts beyond those caused by the QSA. Execution of these agreements is included within the scope of the QSA "project" evaluated in the PEIR and this Addendum.

### Regulatory Background

According to Section 15164(a) of the State CEQA Guidelines, "[t]he lead agency or responsible agency must prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 [which calls for the] preparation of a Subsequent EIR have occurred."

Section 15162 of the State CEQA Guidelines lists the conditions that would require the preparation of a Subsequent EIR rather than an Addendum. These conditions are as set forth below:

1. Substantial changes are proposed in the project that will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. Substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; or

3. New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, and shows any of the following:

    a. The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

    b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;

    c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the proposed proponents decline to adopt the mitigation measures; or

    d. Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

After evaluating the environmental impacts associated with the changes to the Proposed Project, the co-lead agencies have concluded that none of the conditions requiring preparation of a Subsequent EIR have occurred.

## 1.2 CONTENTS OF THE ADDENDUM

Section 1 of the Addendum includes a description of previous environmental documentation and events following the PEIR certification, a description of the Proposed Project evaluated in the PEIR, changes to the Proposed Project since certification of the PEIR, new and refined mitigation measures for certain significant impacts at the Salton Sea, a minor modification to PEIR Table ES-1, and a summary of the analysis showing that a Subsequent EIR is not required pursuant to Section 15162 of the State CEQA Guidelines.

Section 2 is an environmental checklist form evaluating the impacts of the changes to the Proposed Project. This form is based on the model prepared by the Office of Planning and Research and has been modified to reflect the significance criteria used in the PEIR.

Section 3 includes an explanation of each of the answers in the environmental checklist.

Section 4 is a discussion of the effectiveness of the new and refined mitigation measures in reducing or avoiding significant impacts to certain resources of the Salton Sea.

Section 5 is a list of references.

## 1.3 PREVIOUS ENVIRONMENTAL DOCUMENTATION AND EVENTS FOLLOWING THE PEIR CERTIFICATION

**Previous Environmental Documentation**

While the PEIR was certified as complete by all four co-lead agencies, the QSA has not been approved by any of these agencies. The following environmental documentation was previously prepared for the Proposed Project:

1. A Notice of Preparation (NOP) was circulated on June 8, 2000 for a 30-day public review period ending on July 8, 2000.

2. An Initial Study was prepared and circulated concurrently with the NOP.

3. A Notice of Availability of the Draft PEIR was published in a major newspaper serving each of the areas of the co-lead agencies.

4. The Draft PEIR was released on January 30, 2002 and the public review period ended on March 26, 2002.

5. The PEIR was certified by each of the four co-lead agencies in June 2002.

6. The December 2002 Addendum was approved by the four co-lead agencies in December 2002. This Addendum carries forward all relevant information from the December 2002 Addendum.

**Events Following the PEIR Certification**

On September 9, 2002, IID submitted its water order to the United States Bureau of Reclamation (Reclamation) for the delivery of 3.1 MAF of Colorado River water during 2003. In December, 2002, Reclamation announced that it had reviewed the water order pursuant to the procedure outlined in 43 Code of Federal Regulations (CFR) Part 417 and rejected IID's water order based upon its interpretation of IID's contract for the delivery of Colorado River water. Reclamation approved the delivery of a lesser amount. IID challenged the decision in the United States District Court and was granted a preliminary injunction against enforcement of the cutback. The Court stayed the case in April 2003 pending a new Part 417 review. Reclamation has been conducting a new Part 417 review, which is ongoing. The parties to the litigation have agreed to settle the litigation and terminate the 2003 Part 417 review on execution of a QSA by all parties that would resolve those issues.

On December 20, 2002, the State Water Resources Control Board (SWRCB) issued Revised Order WRO 2002-0013 approving IID's and SDCWA's *"Amended Joint Petition for Approval of a Long-Term Transfer of Conserved Water From IID to SDCWA and to Change the Point of Diversion, Place of Use, and Purpose of Use Under IID's Permit 7642"* (SWRCB 2002). The contractual agreements in the QSA and SWRCB Order WRO 2002-0013 provide the QSA participating agencies (CVWD, IID, MWD, and SDCWA) with the ability to conserve and transfer Colorado River water and to provide the environmental mitigation required by the environmental analyses and required by governmental permits.

In September 2003, the California State Legislature passed three bills related to the QSA and Salton Sea restoration, Senate Bill (SB) 277, SB 317, and SB 654. Collectively, these bills provide mechanisms for mitigation of the QSA's impacts on the Salton Sea, assure that implementation of the QSA will be consistent with Salton Sea restoration, and provide significant funding for Salton Sea restoration. Provisions of these bills that change the QSA are reviewed in Section 1.6.

## 1.4 DOCUMENT INCORPORATED BY REFERENCE

Consistent with Section 15150 of the State CEQA Guidelines, the following document was used in the preparation of this Addendum and is incorporated herein by reference:

- *Final Program Environmental Impact Report for the Quantification Settlement Agreement,* State Clearinghouse No. 2000061034, Volumes I and II, prepared for the Coachella Valley Water District, the Imperial Irrigation District, The Metropolitan Water District of Southern California, and the San Diego County Water Authority.

## 1.5 DESCRIPTION OF THE PROPOSED PROJECT ADDRESSED IN THE CERTIFIED PEIR

**Project Location**

The project location includes much of Southern California. The region of influence (ROI) comprises the historic floodplain of the Colorado River below Lake Mead and the areas that receive Colorado River water: the IID, CVWD, and MWD service areas, including the SDCWA service area. The service areas include all or part of Ventura, Los Angeles, Orange, San Diego, San Bernardino, Riverside, and Imperial counties. The ROI also includes the lower Colorado River mainstem and the areas of conveyance and distribution of Colorado River water by these agencies.

**Proposed Project**

The Proposed Project involves a series of water transfers, water exchanges, water conservation measures, and other changes identified in the QSA. The QSA is a proposed agreement among CVWD, IID and MWD to budget their portion of California's apportionment of Colorado River water among themselves and to make water conserved in the IID service area and by lining the Coachella and All American canals available to CVWD, MWD, SDCWA, and others. Implementation of the QSA would not affect the diversion, distribution, and/or use of Colorado River water except within California. Within California, the QSA would only affect the diversion, distribution, and/or use of Colorado River water by the participating agencies. The

QSA would not affect the diversion, distribution, and/or use of Colorado River water by other agencies within California that hold rights to Colorado River water.

The QSA quantifies, by agreement, the amount of Colorado River water available to each of the participating agencies and calls for specific changes in the distribution of that water among the agencies for the quantification period. The quantification period extends for up to 75 years, although the QSA anticipates a transition period of approximately 25 years for the full implementation of water conservation/transfers and exchange projects. Many of the water conservation and transfer components of the QSA would be implemented incrementally over a period of several years.

## 1.6 CHANGES TO THE PROPOSED PROJECT, NEW AND REFINED MITIGATION MEASURES, AND MODIFICATION OF PEIR TABLE ES-1

***Changes to the Proposed Project since Certification of the PEIR***

Proposed Project changes between June 2002 and September 2003 are described below. Changes have occurred as the result of various negotiations that have included members of the California Assembly, parties representing California Department of Water Resources (DWR), California Department of Fish and Game (DFG), the United States Department of the Interior, and the four co-lead agencies. The description of each key change below is followed by an italicized discussion of why it does not trigger the preparation of a Subsequent EIR pursuant to Section 15162 of the State CEQA Guidelines. Table 1.6-1, a revised version of PEIR Table 2.4-1, summarizes all changes to the Proposed Project negotiated between June 2002 and September 2003, including changes making the QSA consistent with SB 277, SB 317, and SB 654.

- A change in the water delivery ("ramp-up") schedule would occur for the transfer of water from IID to SDCWA and from IID to CVWD. Table 1.6-2 summarizes these changes in ramp-up schedule by calendar year. This ramp-up schedule is provided for illustrative purposes. Minor adjustments may be made over the term of the QSA implementation. In general, under the revised ramp-up schedule there is a decrease in the transfer of water to SDCWA during the first 18 years and a slight increase in years 19 and 20. IID can make additional water deliveries available to SDCWA during the ramp-up period. There is a total decrease of 90 thousand acre-feet (KAF) in the water delivery to CVWD for the first 15 years and an equivalent increase through year 45. IID has the discretion to pick the conservation methods and water schedules consistent with state and federal law and the QSA and related agreements.

  ***QSA CEQA Determination.*** *This change in the delivery schedule does not trigger the preparation of a Subsequent EIR for the QSA because the overall amount of water transferred and related impacts would be less than described in the PEIR. Additionally, IID's use of the same types of water conservation methods (e.g., on-farm conservation measures, delivery system improvements, and fallowing) that are currently contemplated were fully analyzed in the PEIR. Minor adjustments may be made to the ramp-up schedule provided in Table 1.6-2; however, no significant deviations are anticipated that would result in effects significantly different from those that were analyzed and presented in the PEIR and this Addendum.*

**Table 1.6-1. Comparison of QSA Terms Identified in the PEIR and Proposed Changes[1]**

| *Original QSA Component Terms as Analyzed in the Draft and Final Program EIR* | *QSA Revisions Between June 2002 and September 2003* |
|---|---|
| **A. Priority 3a Colorado River water capped at 3.1 MAFY**<br>IID consensually limits its consumptive use of Priority 3a water to a specified amount of 3.1 MAFY, subject to adjustment as provided in the QSA and the IOP. | No change. |
| **B. QSA Changes to IID/MWD 1988 Agreement, IID/MWD/PVID/CVWD 1989 Approval Agreement, and MWD/CVWD 1989 Agreement to Supplement Approval Agreement**<br>MWD would forego, and would not be charged with, the use of 20 KAFY of IID conserved water. CVWD would be allowed the use of this 20 KAFY under terms of the 1989 IID/MWD/PVID/CVWD Approval Agreement, and MWD/CVWD Supplemental Agreement, as amended. | No change. |
| **C. IID/SDCWA Transfer of conserved water (up to 200 KAFY)**<br>An amount of water equivalent to the amount of water conserved in IID service area would be transferred to SDCWA. At SDCWA's election, the water would be delivered to Lake Havasu.<br>Under the QSA, IID would transfer from 130 to 200 KAFY to SDCWA. The transfer would be expected to begin in 2002, and would increase by 20 KAF yearly until full implementation under the QSA between 2008 and 2011 (i.e., 130 and 200 KAF transferred to SDCWA). In addition, with implementation of the QSA, IID would conserve and transfer water to SDCWA in the following years and amounts: 2.5 KAF in 2005; 5 KAF in 2006; and 2.5 KAF in 2007 (termed "Early Water").<br>Water conservation measures within the IID service area include the following: On-farm conservation measures, water delivery system improvements, and fallowing. Under terms of the IID/SDCWA Conservation and Transfer Agreement, the first 130 KAFY of conserved water would come from on-farm conservation | Under the revised terms of the QSA, IID would conserve and transfer 200 KAFY to SDCWA. The transfer would start in 2003 or 2004 and would ramp up in the following years and amounts: 10 KAF in 2003; 20 KAF in 2004; 30 KAF in 2005; 40 KAF in 2006; 50 KAF in both 2007 and 2008; 60 KAF in 2009; 70 KAF in 2010; 80 KAF in 2011; 90 KAF in 2012; 100 KAF in each of year from 2013 to 2017; 130 KAF in 2018; 160 KAF in 2019; 190 KAF in 2020; and 200 KAF for each year thereafter. IID would deliver a minimum of 1 MAF to SDCWA from 2003 to 2017 as identified in the above ramp-up schedule. In addition, IID can make additional water available to SDCWA in amounts greater than ramp-up schedule, although not to exceed 200 KAFY. SDCWA would have the right, although not the obligation, to purchase water that IID makes available in amounts greater that the ramp-up schedule.<br>Through year 15 IID would have the discretion to pick the conservation method that assures the achievement of Salton Sea salinity goals and water conservation and delivery schedules consistent with state and federal laws along with |

**Table 1.6-1. Comparison of QSA Terms Identified in the PEIR and Proposed Changes[1]**

| *Original QSA Component Terms as Analyzed in the Draft and Final Program EIR* | *QSA Revisions Between June 2002 and September 2003* |
|---|---|
| measures (not including fallowing). Conservation of the remaining 170 KAFY could come from water delivery system improvements and/or fallowing (for a total of 300 KAF conserved within the IID service area). | the QSA and related agreements.<br>The initial term of the IID/SDCWA Water Conservation and Transfer Agreement would be 45 years with a renewal term of 30 years, for a total of up to 75 years. "Early water" transfer would be postponed until 2020.<br>In addition, if SDCWA elects to pursue the East Mesa well field for Salton Sea mitigation, then IID would increase its annual deliveries to SDCWA to permit reductions in fallowing. |
| D. **MWD/SDCWA Exchange of conserved water (up to 200 KAFY)**<br>SDCWA would exchange water conserved by IID under the IID/SDCWA Water Conservation and Transfer Agreement with MWD; MWD would divert that water at Lake Havasu; MWD would deliver an equivalent amount of water to SDCWA at the SDCWA/MWD delivery point in San Diego County. | In addition to the exchange of water conserved by IID under the IID/SDCWA Water Conservation and Transfer Agreement, SDCWA may exchange other Colorado River water it acquires through agreement with MWD for water from the PVID Land Management, Crop Rotation, and Water Supply Program, and the All American and Coachella Canal lining projects. |
| E. **IID/CVWD/MWD Transfer of conserved water (up to 100 KAFY, also known as the First and Second 50 KAFY)**<br>*First 50 KAFY*<br>An amount of water equivalent to the amount of water conserved in the IID service area, which CVWD elects to acquire, would be made available at Imperial Dam. Any amount not acquired by CVWD may be acquired by MWD, and could be diverted at Lake Havasu. Transfers of water under the First 50 KAFY would be expected to begin in 2007 and would increase by 5 KAF per year until the full 50 KAFY is achieved (2016).<br>*Second 50 KAFY*<br>An amount of water equivalent to the amount of water conserved in the IID service area, which CVWD elects to acquire, would be made available at Imperial Dam. Any amount not acquired by CVWD may be acquired by MWD, and could be diverted at Lake Havasu. After Year 45, MWD would bear the obligation to provide the Second 50 KAFY to CVWD. | *First and Second 50 KAFY*<br>Under the revised terms of the QSA, First 50 KAFY transfer of conserved water would begin in 2008 and would ramp-up based on the following schedule: 4 KAF in 2008; 8 KAF in 2009; 12 KAF in 2010; 16 KAF in 2011; 21 KAF in 2012; 26 KAF in 2013; 31 KAF in 2014; 36 KAF in 2015; 41 KAF in 2016; 45 KAF in 2017; and 63 KAFY in 2018. Starting in 2019 the transfer amount would ramp-up at approximately 5 KAFY, until the annual amount conserved and transferred is 103 KAF (occurs in approximately 2026). This 103 KAFY would be conserved within the IID service area and transferred to CVWD and/or MWD (in the event that CVWD elects not to acquire all or a portion of this water) through 2047. Under the First 50 KAFY and after Year 45 of the QSA (calendar year 2047), IID would continue to conserve and transfer 50 KAFY for the remainder of the QSA term (2077). MWD's obligation to provide the Second 50 KAF after 2047 (Year 45 of the QSA) would not change. |

**Table 1.6-1. Comparison of QSA Terms Identified in the PEIR and Proposed Changes[1]**

| | *Original QSA Component Terms as Analyzed in the Draft and Final Program EIR* | *QSA Revisions Between June 2002 and September 2003* |
|---|---|---|
| | *Early Water*<br>MWD would receive an option to acquire water conserved by IID in the following years and amounts: 2.5 KAF in 2005; 5 KAF in 2006; and 2.5 KAF in 2007. In the event that CVWD postpones the acquisition of the First 50 KAFY to a year later than 2007, MWD could also receive an additional 5 KAF in 2006; 7.5 KAF in 2007; and 10 KAF in each year from 2007 to 2014. | *Early Water*<br>The early water transfer to SDCWA would be postponed until 2020. In addition, MWD would no longer receive an option to acquire the 2.5 KAF, 5 KAF, and 2.5 KAF of early water in 2005, 2006, and 2007, respectively.<br>In the event that CVWD postpones the start of the acquisition of the First 50 KAFY to a year later than 2007, the water not taken by CVWD could go to MWD instead. |
| F. | **Transfer of conserved water (67.7 KAFY)**<br>An amount of water equivalent to the amount of water conserved by lining a section of the All American Canal would be diverted by MWD and/or IID (56.2 KAFY), and the San Luis Rey Indian Water Rights Settlement Parties (11.5 KAFY) via MWD and SDCWA facilities. | SDCWA may receive MWD's rights to conserved water from the lining of the All American and Coachella Canal lining projects. |
| G. | **Priority 6a Colorado River priorities and volume allocations**<br>Diversion of Priority 6a water in the following priorities and volumes: 38 KAFY to MWD, 63 KAFY to IID and 119 KAFY to CVWD, when available. | No change. |
| H. | **Priority 3a Colorado River water capped at 330 KAFY**<br>CVWD consensually limits its consumptive use of Priority 3a water to a specified amount of 330 KAFY, subject to adjustment as provided in the QSA and the IOP. Water conserved and transferred to CVWD under the QSA shall not count against CVWD's Priority 3a cap. | No change. |
| I. | **Transfer of conserved water (26 KAFY)**<br>An amount of water equivalent to the amount of water conserved by lining a portion of the Coachella Canal would be diverted by MWD, and/or IID (21.5 KAFY), and the San Luis Rey Indian Water Rights Settlement Parties (4.5 KAFY) via MWD and SDCWA facilities. | SDCWA may receive MWD's rights to conserved water from the All American and Coachella Canal lining projects. |

**Table 1.6-1. Comparison of QSA Terms Identified in the PEIR and Proposed Changes[1]**

| | *Original QSA Component Terms as Analyzed in the Draft and Final Program EIR* | *QSA Revisions Between June 2002 and September 2003* |
|---|---|---|
| J. | **Transfer of water (35 KAFY)**<br>MWD would transfer 35 KAFY of its SWP entitlement to CVWD. CVWD would deliver 35 KAFY of its SWP entitlement to MWD at the Devil Canyon Afterbay; in exchange, MWD would forgo the use of 35 KAFY of Colorado River water for use by CVWD. | No change. |
| K. | **MWD Priority 4 and 5 Colorado River water cap**<br>MWD consensually limits its consumptive use of Priority 4 and 5 water to a specified amount of 550 KAFY and 662 KAFY, respectively, pursuant to the conditions as specified in the QSA, and subject to adjustment as provided by the IOP. | No change. |
| L. | **Over and Under Run of Priorities 1, 2 and 3b**<br>MWD shall be responsible, when necessary, in conjunction with the IOP for repayment of any overrun as a result of the aggregate use by Priorities 1, 2 and 3b in excess of 420 KAFY; to the extent that Priorities 1, 2 and 3b use less than 420 KAFY, MWD shall have the exclusive right to consumptively use such unused water. | No change. |
| M. | **Use by Miscellaneous PPRs and Federal Reserved Rights, including certain Indian Reservations**<br>Water forborne, when necessary, by CVWD and IID in the amount of 3 and 11.5 KAFY respectively, and water forborne by MWD in the aggregate amount in excess of 14.5 KAFY necessary to satisfy Miscellaneous PPRs and Federal Reserve Rights, including Indian Reservations. | No change. |
| N. | **QSA Shortage Sharing Agreement**<br>If there is less than 3.85 MAF of Colorado River water available under Priorities 1, 2, and 3 in any one year during the quantification period, shortages would be shared pursuant to the particular provisions of the Acquisition Agreements[2] and the Allocation Agreement[3]. | No change. |

**Table 1.6-1. Comparison of QSA Terms Identified in the PEIR and Proposed Changes[1]**

| *Original QSA Component Terms as Analyzed in the Draft and Final Program EIR* | *QSA Revisions Between June 2002 and September 2003* |
|---|---|
| **O. Socioeconomic Impacts of the IID/SDCWA Water Conservation and Transfer Agreement**<br>No significant impacts were identified. | A local entity would be established by IID to administer the receipt and disbursement of socioeconomic impact payments made by SDCWA and IID. SDCWA and IID would participate and provide support to the local entity. |

*Key:* MAFY = million acre-feet per year; KAFY = thousand acre-feet per year; PPR = Present Perfected Right; SWP = State Water Project

(1) Transfers under the QSA may begin in calendar year 2003 or 2004. The amounts shown above would shift by one year if the transfers were initiated in 2004. All QSA components would terminate prior to, or at the end of the quantification period pursuant to the terms and conditions of the QSA, with the exception of the water transferred to the San Luis Rey Indian Water Rights Settlement Parties.

(2) The Acquisition Agreements are collectively the IID/SDWCA Water Conservation and Transfer Agreement, the CVWD/MWD Acquisition Agreement, the IID/MWD Acquisition Agreement, the IID/CVWD Acquisition Agreement, and the MWD/CVWD SWP Transfer and Exchange Agreement.

(3) The Allocation Agreement is a proposed agreement among the City of Escondido, Palo Verde Irrigation District, SDCWA, San Luis Rey River Indian Water Authority, Vista Irrigation District, the La Jolla, Pala, Pauma, Rincon and San Pasqual bands of Mission Indians, MWD, CVWD, and IID, and the Secretary concerning the allocation of conserved water created by the All American and Coachella Canal lining projects.

**Table 1.6-2. Comparison of Original and Revised QSA Delivery Schedules**

| *Agreement Yr* | *Calendar Yr* | *IID/SDCWA Transfer (KAF)* | | | *IID/CVWD Transfer (KAF)*[1] | | | *IID/MWD Transfer (KAF)* | | | *Total Delivery (KAF)* | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | *Original* | *Revised* | *Difference* | *Original* | *Revised* | *Difference* | *Original* | *Revised* | *Difference* | *Original* | *Revised* | *Difference* |
| 1 | 2003[2] | 20 | 10 | -10 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 10 | -10 |
| 2 | 2004 | 40 | 20 | -20 | 0 | 0 | 0 | 0 | 0 | 0 | 40 | 20 | -20 |
| 3 | 2005 | 62.5 | 30 | -32.5 | 0 | 0 | 0 | 2.5 | 0 | -2.5 | 65 | 30 | -35 |
| 4 | 2006 | 85 | 40 | -45 | 0 | 0 | 0 | 5 | 0 | -5 | 90 | 40 | -50 |
| 5 | 2007 | 102.5 | 50 | -52.5 | 5 | 0 | -5 | 2.5 | 0 | -2.5 | 110 | 50 | -60 |
| 6 | 2008 | 120 | 50 | -70 | 10 | 4 | -6 | 0 | 0 | 0 | 130 | 54 | -76 |
| 7 | 2009 | 140 | 60 | -80 | 15 | 8 | -7 | 0 | 0 | 0 | 155 | 68 | -87 |
| 8 | 2010 | 160 | 70 | -90 | 20 | 12 | -8 | 0 | 0 | 0 | 180 | 82 | -98 |
| 9 | 2011 | 180 | 80 | -100 | 25 | 16 | -9 | 0 | 0 | 0 | 205 | 96 | -109 |
| 10 | 2012 | 200 | 90 | -110 | 30 | 21 | -9 | 0 | 0 | 0 | 230 | 111 | -110 |
| 11 | 2013 | 200 | 100 | -100 | 35 | 26 | -9 | 0 | 0 | 0 | 235 | 126 | -109 |
| 12 | 2014 | 200 | 100 | -100 | 40 | 31 | -9 | 0 | 0 | 0 | 240 | 131 | -109 |
| 13 | 2015 | 200 | 100 | -100 | 45 | 36 | -9 | 0 | 0 | 0 | 245 | 136 | -109 |
| 14 | 2016 | 200 | 100 | -100 | 50 | 41 | -9 | 0 | 0 | 0 | 250 | 141 | -109 |
| 15 | 2017 | 200 | 100 | -100 | 55 | 45 | -10 | 0 | 0 | 0 | 255 | 145 | -110 |
| 16 | 2018 | 200 | 130 | -70 | 60 | 63 | 3 | 0 | 0 | 0 | 260 | 193 | -67 |
| 17 | 2019 | 200 | 160 | -40 | 65 | 68 | 3 | 0 | 0 | 0 | 265 | 228 | -37 |
| 18 | 2020 | 200 | 192.5 | -7.5 | 70 | 73 | 3 | 0 | 0 | 0 | 270 | 268 | -2 |
| 19 | 2021 | 200 | 205 | 5 | 75 | 78 | 3 | 0 | 0 | 0 | 275 | 288 | 13 |
| 20 | 2022 | 200 | 202.5 | 2.5 | 80 | 83 | 3 | 0 | 0 | 0 | 280 | 288 | 8 |
| 21 | 2023 | 200 | 200 | 0 | 85 | 88 | 3 | 0 | 0 | 0 | 285 | 288 | 3 |
| 22 | 2024 | 200 | 200 | 0 | 90 | 93 | 3 | 0 | 0 | 0 | 290 | 293 | 3 |
| 23 | 2025 | 200 | 200 | 0 | 95 | 98 | 3 | 0 | 0 | 0 | 295 | 298 | 3 |
| 24-44 | 2026-2046 | 200 | 200 | 0 | 100 | 103 | 3 | 0 | 0 | 0 | 300 | 303 | 3 |
| 45 | 2047 | 200 | 200 | 0 | 50 | 103 | 53 | 0 | 0 | 0 | 250 | 303 | 53 |
| 46-75 | 2048-2077 | 200 | 200 | 0 | 50 | 50 | 0 | 0 | 0 | 0 | 250 | 250 | 0 |
| **Total** | | **14,110** | **12,890** | **-1,220** | **4,650** | **4,650** | **0** | **10** | **0** | **-10** | 18,770 | 17,550 | -1,220 |

*Note:* This ramp-up schedule is provided for illustrative purposes, and minor adjustments may be made to the schedule over the term of the QSA implementation. However, no substantial deviations from the ramp-up schedule that would result in environmental effects substantially different than those analyzed in the PIER are anticipated.

1. Or MWD if CVWD declines to acquire.
2. Transfers under the QSA may begin in calendar year 2003 or 2004. If transfers were to begin in 2004, the 75-year implementation period would end in 2078.

- The initial term of the IID/SDCWA Agreement would start in the year 2003 or 2004 instead of 2002.

  ***QSA CEQA Determination.*** *Delaying the start date of this 75-year agreement by one to two years does not trigger the preparation of a Subsequent EIR for the QSA because overall impacts would be as described in the PEIR.*

- SDCWA may elect to pursue at no cost to IID the East Mesa Well Field as an alternative "make-up" water source for Salton Sea impact mitigation. If it does, IID would increase its annual deliveries to SDCWA to permit reductions in fallowing.

  ***QSA CEQA Determination.*** *Use of groundwater in the East Mesa area as an alternative mitigation measure to provide water to the Salton Sea does not trigger the preparation of a Subsequent EIR for the QSA because its feasibility has not been determined, and cannot be determined at this time; hence, it is speculative and not proposed as a mitigation measure for QSA impacts. If this mitigation measure is eventually determined to be feasible and is considered for implementation by the co-lead agencies, subsequent environmental analysis would be required prior to its implementation.*

- "Early" water transfers to SDCWA would be postponed until 2020. Early water transfers to MWD would be deleted.

  ***QSA CEQA Determination.*** *Postponing the "early" water transfers to SDCWA until 2020 and eliminating the early water transfers to MWD does not trigger the preparation of a Subsequent EIR for the QSA because this amount of water is small in comparison with the overall amounts transferred, and because the overall volumes that were analyzed in the PEIR would not change.*

- **State Legislation**

  In September 2003, the California Legislature approved three related bills (SB 317, SB 277 and SB 654) that facilitate implementation of the QSA, as well as restoration of the Salton Sea. SB 317 amends Fish & Game Code Section 2081.7 to permit DFG to authorize the take of certain species within the Imperial Valley and in and around the Salton Sea, as a result of aspects of the Proposed Project, subject to certain conditions. These conditions include IID's provision of two 800 KAF increments of conserved water (a total of 1.6 MAF), as described in Section 2081.7(c)(1) and (2). The relationship between these two transfers and the environmental analysis set forth in this Addendum is discussed below.

  ***Mitigation Increment***

  One increment of up to 800 KAF, described in Section 2081.7(c)(2) and referred to as the "Mitigation Increment," must be provided by IID during the first 15 years of the QSA term. The contractual agreements included as part of the QSA provide for the conservation of the Mitigation Increment by IID and the delivery of the Mitigation Increment to the Salton Sea consistent with Mitigation Strategy 2a (refer to page 1-15 for a description of Mitigation Strategy 2a). This Addendum, through evaluation of Mitigation Strategy 2a, demonstrates that implementation of Section 2081.7(c)(2) in this

manner will not have any effect on the environmental impacts of the Proposed Project or the mitigation of those impacts.

***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because the Mitigation Increment merely provides a mechanism to implement the water conservation measures and subsequent delivery of that water to the Salton Sea for the purposes of mitigating impacts of the proposed transfers that were envisioned in Mitigation Strategy 2 (included in the PEIR) and its subsequent revision, Mitigation Strategy 2a. The Mitigation Increment would be conserved in a manner consistent with the conservation methods envisioned in both Mitigation Strategy 2 and Mitigation Strategy 2a. The amount of water conserved would be consistent with the amount identified in the PEIR, and conservation measures would consist of those identified in the PEIR, which include on-farm irrigation system improvements, water delivery system improvements, and/or fallowing, or any combination of these methods.*

SB 277, enacted concurrently with SB 317, establishes the Salton Sea Restoration Act (Act). The Salton Sea Restoration Act states the Legislature's intent 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 Act establishes the Salton Sea Restoration Fund, administered by the Director of Fish & Game. The Act provides that Salton Sea restoration will be based on a preferred alternative to be developed as a result of a restoration study and alternative selection process described in Fish & Game Code Section 2081.7, as amended by SB 317.

It is anticipated that use of the Mitigation Increment to be provided by IID may be modified by DWR at some point during the first 15 years of the Proposed Project, based upon the needs of the approved Salton Sea restoration plan. Since a restoration plan has not been identified, assessed or approved, however, the use or transfer of the Mitigation Increment in any manner inconsistent with Mitigation Strategy 2a is speculative and cannot feasibly be assessed for environmental impacts at this time.

In order for DWR to change the use of the Mitigation Increment at any time during the 15-year period during which it is committed to the Salton Sea pursuant to Mitigation Strategy 2a: (1) the Secretary of Resources, in conjunction with DFG, DWR, the appropriate air quality districts, and the Salton Sea Authority and its advisory committee, first must have completed a restoration study to determine a preferred alternative for Salton Sea restoration along with the accompanying programmatic environmental documents; (2) the Secretary of Resources also must have found that the transfer of the Mitigation Increment is consistent with the preferred alternative for Salton Sea restoration; and, (3) DWR must relieve the QSA participating agencies from, or assume, the QSA participating agencies' obligations to implement Mitigation Strategy 2a and other mitigation measures and permit conditions related to the Proposed Project that are facilitated by the delivery of the Mitigation Increment to the Salton Sea, including assuming responsibility for all environmental impacts, including Salton Sea salinity, that are related to the use or transfer of the Mitigation Increment.

***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because the use of the Mitigation Increment in any manner inconsistent with*

*Mitigation Strategy 2a is speculative. Subsequent environmental analysis under the direction of the Secretary of Resources would be required in order to change the use of this water. Additionally, the Salton Sea restoration is not part of the QSA; rather the QSA will make available water and funding, under specified conditions, for Salton Sea restoration activities. Specific restoration activities are speculative at this time and will require future environmental analysis under the direction of the Secretary of Resources.*

***Restoration Increment***

The second 800 KAF increment, described in Fish & Game Code Section 2081.7(c)(1) and described herein as the "Restoration Increment," must be transferred by IID to DWR, on a mutually agreed schedule, in exchange for $175/per acre-feet, as adjusted annually for inflation. IID is required to commit to transfer the Restoration Increment as part of the contractual agreements included in the QSA, in order to satisfy the transfer requirement set forth in Section 2081.7(c)(1). To acquire the Restoration Increment, DWR must first assume the responsibility for all environmental impacts, including Salton Sea salinity, related to use or transfer of the Restoration Increment, and the responsibility for performance of all mitigation measures required under the environmental analysis and the related permits and approvals.

***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because the Salton Sea restoration is not part of the QSA; rather the QSA will make available water and funding, under specified conditions, for Salton Sea activities. Specific restoration activities are speculative at this time and will require future environmental analysis by the Secretary of Resources. Since the Salton Sea restoration plan has not been identified, assessed or approved, the environmental effects of the conservation, transfer and use of the Restoration Increment are speculative and cannot feasibly be assessed at this time. An assessment of the conservation, transfer and use of the Restoration Increment is not included in the PEIR, or this Addendum. As discussed above, the conservation, transfer and use of this water would require future environmental analysis by the Secretary of Resources.*

- Under the revised QSA, SDCWA may receive MWD rights to conserved water from the All American and Coachella Canal lining projects.

  ***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because (1) this provision would not change the amount of water conserved and transferred to MWD's point of diversion in Lake Havasu as a result of the QSA, and (2) the water would replace water that MWD would have otherwise delivered to SDCWA (i.e., this water would replace water that SDCWA would otherwise order from MWD, but the overall amount of Colorado River water and MWD water used in the SDCWA service area would remain the same).*

- A total of up to 145 KAF of water conserved by IID may be transferred to urban agencies in 2006, 2009 or 2012 to meet benchmarks established in the Department of Interior's Interim Surplus Guidelines.

  ***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because this amount of water is small in comparison with the overall amounts*

*transferred, and would represent only a minor addition to the amount of water conserved and transferred under the QSA. Additionally, this change will not result in any new significant impacts or substantially increase the severity of impacts identified in the PEIR. The amount of water conserved would be similar to the amount identified in the PEIR. Conservation measures would consist of those identified in the PEIR, which include on-farm irrigation system improvements, water delivery system improvements, and/or fallowing, or any combination of these methods.*

- A local entity would be established by IID to administer the receipt and disbursement of socioeconomic impact payments made by SDCWA and IID.

  ***QSA CEQA Determination.*** *Creation of a local administrative entity does not trigger the preparation of a Subsequent EIR for the QSA. It would cause no environmental impacts and would facilitate the receipt and disbursement of socioeconomic impact payments made by SDCWA and IID.*

- MWD may make up to 390 KAF available to SDCWA over the first 15 years of the Proposed Project from the Palo Verde Irrigation District (PVID) Land Management, Crop Rotation, and Water Supply Program.

  ***QSA CEQA Determination.*** *This change does not trigger the preparation of a Subsequent EIR for the QSA because the PVID program is an approved project that was the subject of a separate EIR prepared and certified by PVID (PVID 2002). Water from this independently approved project is available to MWD and would be exchanged under the 1998 MWD/SDCWA Exchange Agreement. The PVID program is not part of the QSA and does not constitute a change to the QSA. Additionally, the PVID program does not change impacts associated with the QSA.*

**New and Refined Mitigation Measures**

This section discusses the refinement of a mitigation measure described in the PEIR and new mitigation measures that were added after the PEIR was certified. These changes are presented and evaluated in this Addendum for purposes of public disclosure. The mitigation measures described in the PEIR have not yet been made part of the Proposed Project; final mitigation measures will be adopted as part of the project only when the CEQA findings on significant impacts are made. Therefore, changes to unadopted mitigation measures would not require a Subsequent EIR pursuant to State CEQA Guidelines Section 15162. Even if the changes to mitigation measures were evaluated as Proposed Project changes, none of them would constitute substantial project changes, substantial changes in circumstances, or new information of substantial importance triggering the preparation of a Subsequent EIR pursuant to State CEQA Guidelines Section 15162.

*Refinement of Mitigation Strategy 2*

After the PEIR was certified, consultations between the U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (USFWS), DFG, and the co-lead agencies resulted in the refinement of a mitigation strategy to reduce impacts to the biological resources of the Salton Sea that are a result of the reduction in flow to the Salton Sea from water conservation activities. One method of mitigating these impacts is to conserve more water than is necessary

to transfer to SDCWA and deliver the additional conserved water to the Salton Sea to maintain water surface elevation and salinity. This was identified as Mitigation Strategy 2 in the PEIR; under the refined mitigation measure (Mitigation Strategy 2a), for the first 15 years of the Proposed Project, additional water would be made available to the Salton Sea in an amount equal to that which would have flowed to the Sea absent the proposed conservation and transfer of water to SDCWA.

Under Mitigation Strategy 2a, water conserved by fallowing would generally require one-half unit of make-up water for each unit of water exported. Should water be conserved by on-farm conservation or other efficiency improvements, make-up water would be equal to the amount of water conserved. Water delivered to CVWD would be conserved by on-farm or other efficiency measures. Since the water conserved and transferred to CVWD is not being exported out of the Salton Sea watershed, no make-up water would be provided. One-third of the water conserved by IID and transported to the CVWD service area would be expected to drain to the Salton Sea following use in the CVWD service area. Overall, the combined conservation and transfer actions during the first 15 years of the Proposed Project would cumulatively reduce the inflow to the Salton Sea by approximately 0.8 percent[1].

DFG has reviewed implementation of Mitigation Strategy 2a for its impact on Salton Sea salinity and reclamation and has prepared draft findings (DFG 2002) concluding that implementation of the QSA and the proposed mitigation during the first 15 years of the agreement:

1. will not result in a material increase in projected salinity levels at the Salton Sea;

2. will not foreclose alternatives for reclamation of the Salton Sea as summarized in Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (Public Law 105-372).

*Additional Mitigation Measure for Biological Resources*

The PEIR identified a significant impact to the brown pelican as an indirect impact from the reduction in inflow to the Salton Sea. After the PEIR was certified, a new mitigation was added to further reduce this significant impact.

- Roosting sites for the brown pelican will be constructed in the South San Diego Bay area and in the Outer Harbor of the City of Santa Barbara. The roost sites are to be functioning by 2018 and will be demonstrated to support at least 100 pelicans each and up to 1,200 in combination. The roost sites will be maintained through 2048.

This is a long-term measure that will help maintain the brown pelican populations in Southern California and will replace habitat lost at the Salton Sea due to increased salinity and the resultant loss of food source. This measure will provide long-term mitigation for this species

1 It should be noted that in December 2002, the USFWS issued a Biological Opinion on the Bureau of Reclamation's Voluntary Biological Conservation Measures and Associated Conservation Agreements with the California Water Agencies and the Imperial Irrigation District's Water Conservation and Transfer to San Diego County Water Authority (Biological Opinion). The Biological Opinion concludes that the implementation of the QSA, including the changes to the Proposed Project, in combination with the proposed conservation (mitigation measures) will not jeopardize the existence of the listed species in and around the Salton Sea.

even after the salinity of the Salton Sea reaches levels when food sources for the species are substantially reduced.

*Additional Mitigation Measures for Air Quality*

The PEIR (section 3.7.2) identified a significant air quality impact resulting from fugitive dust emissions at the Salton Sea resulting from the decline in surface water elevation. The PEIR noted that "as the IID Water Conservation and Transfer Project becomes more defined, additional mitigation measures to address air quality impacts may be identified." Such measures were identified in the EIR/ Environmental Impact Statement (EIS) for the IID Water Conservation and Transfer Project and have been added as mitigation measures. These measures would be implemented as needed. These measures are intended to provide a process to reduce any potential dust emissions due to the exposure of sea bottom. The four-step mitigation plan includes the following measures:

1. **Restrict Access.** Public access, especially off-highway vehicle access, will be limited, to the extent legally and practicably feasible, to minimize disturbance of natural crusts and soils surfaces in future exposed shoreline areas.

2. **Research and Monitoring.** A research and monitoring program will be implemented incrementally as the Salton Sea recedes. The research phase will focus on developing information to help define the potential for problems to occur in the future as the Salton Sea elevation decreases slowly over time. Historical information regarding dust emissions from exposed shorelines will be studied, the amount and ownership of land potentially exposed will be identified, sampling and monitoring will be conducted to determine the extent and toxicity potential of any airborne pollutants, and available information will be analyzed to predict the response of the sea salt crust to rainfall, humidity, temperature and wind. If it is determined that emissions contain selenium or arsenic, a health risk assessment will be prepared.

3. **Create or Purchase Offsetting Emission Reduction Credits.** This step will require negotiations with the local air pollution control districts to develop a long-term program for creating or purchasing particulate matter less than 10 microns in diameter ($PM_{10}$) emission reduction credits. Credits will be used to offset emissions caused by the Proposed Project, as determined by monitoring (see measure 2 above). This step will not be used to mitigate toxic air contaminants (if any); Step 4 will be necessary if toxic air contaminants pose a significant health issue.

4. **Direct Emission Reductions at the Sea.** If sufficient offsetting emission reduction credits are not available or feasible, this mitigation plan will implement dust control measures, including, but not limited to, application of water to the Salton Sea shoreline to reduce particulate emissions, if feasible. If, at any time during the project term, feasible dust mitigation measures are identified, these could be implemented in lieu of other dust mitigation measures or the provision of mitigation water to the Sea.

**Modification of PEIR Table ES-1**

The residual impact was inadvertently omitted under the discussion of air quality impacts at the Salton Sea in Table ES-1 of the PEIR (page ES-47). The impact is stated as follows:

> Although the new shoreline created by reduced inflows to the Salton Sea would only marginally increase the total land area within the ROI that presently generates fugitive dust, emissions from these areas would be significant due to the $PM_{10}$ nonattainment status of the region.

The residual impact is correctly stated on page 3.7-15 of the PEIR and this discussion is hereby incorporated in Table ES-1. The omitted wording is: "The implementation of Mitigation Strategy 2 would reduce the impact from increased fugitive dust emissions at the Salton Sea to a less-than-significant level. If this strategy were not adopted as mitigation for biological impacts, increased fugitive dust emissions would be considered a significant and unavoidable impact." The conclusions of the PEIR have not changed.

## 1.7 EFFECTS OF CHANGES TO THE PROPOSED PROJECT AND MITIGATION STRATEGY 2A

The changes to the Proposed Project are either changes to the timing of conservation and transfer (delivery), the amount of water transferred, or other administrative changes. No new construction would be required to accommodate these changes beyond that considered in the PEIR. This section compares the hydrologic changes to the water service areas of the co-lead agencies, the Colorado River, and the Salton Sea resulting from the Proposed Project and changes to the Proposed Project. It also compares the changes to the Salton Sea resulting from the implementation of Mitigation Strategies 2 and 2a. The additional mitigation measures for air quality and biological resources would not affect hydrologic resources and are not addressed here.

**Changes to the Proposed Project**

*Water Service Areas*

*CVWD.* Water conserved in the IID service area would be transferred to the CVWD service area in accordance with the new delivery schedule. This new schedule would result in a slower delivery (less water per year) for the first 15 years and slightly more water per year in each of implementation years 16 through 45. Approximately 90 KAF less would be delivered the first 15 years than under the Proposed Project evaluated in the PEIR; 90 KAF more would be delivered from years 16 to 45. Ultimately, the same total amount of water would be delivered to the CVWD service area as would have occurred under the Proposed Project evaluated in the PEIR.

*IID.* Water would be conserved within the IID service area and transferred to other service areas in accordance with the new delivery schedule. This new schedule would result in a slower rate (less water per year) of conservation and transfer than the maximum rate evaluated in the PEIR. Water quality in the IID drains and New and Alamo rivers during the first 15 years of implementation would be better than described in the PEIR since less water would be

transferred, resulting in a slower increase in the concentration of selenium and other dissolved solids. Total conservation and transfer rates would be slightly higher (3 to 13 thousand acre-feet per year [KAFY]) in implementation years 19 through 45. Conservation and transfer rates would be the same as evaluated in the PEIR from implementation years 46 through 75. Up to 1,220 KAF less water would be transferred from the IID service area compared to the maximum amount evaluated in the PEIR.

*MWD.* Changes to the Proposed Project would result in less water available for potential transfer to MWD. From 2003 through 2017, MWD would not have the option to receive any of the First 50 KAFY conserved water available to CVWD. For the remainder of the Proposed Project duration, MWD would have the option to obtain up to 90 KAF of additional conserved water if CVWD opted not to take all of the water available to CVWD under the revised ramp-up schedule.

*SDCWA.* Water conserved within the IID service area would be transferred to the SDCWA service area in accordance with the new delivery schedule. This new schedule would result in a slower ramp-up of deliveries (less water per year) for the first 18 years, slightly more water in implementation years 19 and 20, and the same amount of water per year in each of implementation years 21 through 45. The net effect would be a decrease of up to 1,220 KAF in water transferred to the SDCWA for use in their service area compared to the maximum amount evaluated in the PEIR.

***Colorado River***

Changes in the amount of water flowing down the Colorado River from implementation of the QSA are a result of the change in point of diversion from Imperial Dam to Parker Dam that would occur as a result of water transfers to SDCWA or MWD. Over the term of the Proposed Project, flow amounts (and median water surface and groundwater elevations) would be slightly greater than described in the PEIR since less water would be conserved within the IID service area and transferred to SDCWA than originally identified; i.e., more water would remain in the Colorado River for delivery to the IID service area. Overall, the amount of water conserved and transferred over the 75-year implementation period would be up to 1,220 KAF less than the total amount evaluated in the PEIR. Increased river flow generally results in an increase in median water surface and groundwater elevation. The river flows that would result from the changes to the Proposed Project are only slightly different than those evaluated in the PEIR, and are within the range of flows examined in the PEIR.

***Salton Sea***

Water conservation and transfers within the IID service area would reduce inflow to the Salton Sea. The PEIR indicated that the reduced inflow resulting from the Proposed Project would reduce mean water surface level elevation to approximately -250 MSL after 75 years and would increase salinity to approximately 60 parts per thousand (ppt) by 2012 (then implementation year 11). Implementation of the changes to the Proposed Project would slow the rate of change to mean water surface elevation and salinity concentration in the Salton Sea during the first years of the project. A comparison of the changes to the Salton Sea elevation and salinity for Implementation Years 15 and 75 is provided in Table 1.7-1.

**Table 1.7-1. Comparison of Salton Sea Impacts**

| Implementation Year | Elevation (feet MSL) | | | | Salinity (mg/L) | | | |
|---|---|---|---|---|---|---|---|---|
| | *Proposed Project* | *Changed Project* | *Mitigation Strategy 2* | *Mitigation Strategy 2a* | *Proposed Project* | *Changed Project* | *Mitigation Strategy 2* | *Mitigation Strategy 2a* |
| 15 | -239.2 | -235.6 | -231.5 | -231.9 | 75.2 | 61.4 | 56.4 | 57.2 |
| 75 | -249.8 | -249.6 | -235.3 | -247.5 | 162.3 | 147.6 | 86.4 | 143.3 |

**Mitigation Strategy 2a**

Under the PEIR's Mitigation Strategy 2, water would have been provided to the Salton Sea to offset reductions in inflow to the Salton Sea as a result of the Proposed Project. Under Mitigation Strategy 2a, for the first 15 years of the Proposed Project, additional water (the Mitigation Increment) would be conserved or otherwise made available to the Salton Sea in an amount equal to that which would have flowed to the Sea absent the proposed conservation and transfer of water to SDCWA and MWD. A comparison of the changes to the Salton Sea elevation and salinity for Implementation Years 15 and 75 resulting from Mitigation Strategies 2 and 2a is provided in Table 1.7-1. Additionally, the implementation of Mitigation Strategy 2a would accelerate the increase in salinity to 60 ppt by 4 years in comparison to the implementation of Mitigation Strategy 2.

## 1.8 SUMMARY OF CHECKLIST DETERMINATIONS

Table 1.8-1 summarizes the explanation of checklist determinations in Section 3 of this Addendum. As indicated, none of the changes would result in an environmental impact beyond that identified in the PEIR.

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Aesthetics | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. No new construction would be required, nor would operational changes occur that would adversely affect aesthetic resources. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would lessen the already minor impact of the Proposed Project. The changes to the Proposed Project would result in a slightly lessened decrease in the mean surface elevation of the Salton Sea over the Project's 75-year duration, which would slightly lessen the significant impact to aesthetic resources identified in the PEIR. | No impact. |
| Agriculture | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. No new construction would be required, nor would operational changes occur that would result in | No impact. |

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Agriculture *(continued)* | the conversion of farmland to non-agricultural use. Less Colorado River water would be provided to the CVWD service area for the first 15 years of the Project than identified in the PEIR; however, the same amount of water would be available for agricultural purposes during this period since groundwater or other water sources would be used to offset the reduction. Ultimately, the amount of water provided to CVWD would be the same as originally proposed. No impacts to agriculture would result from the decrease in the amount of Colorado River water transferred to SDCWA since other sources of water (e.g., from MWD or other transfers) are available for agricultural use. | |
| Air Quality | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. No new construction would be required, nor would operational changes occur that could affect air quality. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would lessen the already minor impact of the Proposed Project. The changes to the Proposed Project would result in a slightly smaller decrease in the decline in the mean water surface elevation of the Salton Sea than described in the PEIR, which would result in a slightly lessened impact associated with fugitive dust emissions. | No impact. |
| Biological Resources | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would lessen the impacts of the Proposed Project impacts to aquatic, marsh, or riparian habitats and sensitive species that use these habitats. The changes to the Proposed Project would result in a lower salinity concentration in the Salton Sea than described in the PEIR due to the reduced change in flow to the Sea. This would result in slightly lesser impacts than described in the PEIR. The changes to the Proposed Project would result in a slightly lesser decline in mean water surface elevation of the Salton Sea than described in the PEIR, which would result in slightly lesser impacts to desert pupfish than described in the PEIR. Significant impacts to the emergent and in-channel vegetation of the IID drains would be minimized temporarily since water would be conserved and transferred at a slower rate than identified in the PEIR. | No impact. |

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Cultural Resources | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. No new construction or other ground disturbance would be required. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would slightly lessen the already less than significant impact identified in the PEIR. The changes to the Proposed Project would result in a slightly smaller decrease in the decline in mean water surface elevation of the Salton Sea than described in the PEIR, which would result in a slightly lessened impact to exposed cultural resources. | No impact. |
| Geology and Soils | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not require construction, grading, or other modifications that could expose people or structures to potential substantial adverse effects associated with geologic hazards. The changes to the Proposed Project would result in a temporary reduction in the amount of Colorado River water used to recharge the groundwater basin in the Coachella Valley since less water would be delivered to the CVWD service area for the first 15 years of the Project. Thus, groundwater levels in the CVWD service area could be somewhat lower than identified in the PEIR, and the potential for liquefaction hazards to increase would be lessened during this period. Ultimately, impacts would be as described in the PEIR since CVWD would receive the same total amount of Colorado River water. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, thus minimizing the already slight potential for erosion. The changes to the Proposed Project would result in a slightly smaller decrease in the decline in mean water surface elevation of the Salton Sea than described in the PEIR, which would result in a slightly lessened potential for erosion. | No impact. |
| Hazards and Hazardous Materials | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not require the use or transport of hazardous materials or would otherwise result in increased public risk. | No impact. |

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Hydrology and Water Quality | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. Significant, unavoidable impacts to the IID drains and Alamo River from the implementation of water conservation measures would be minimized temporarily since water would be conserved and transferred at a slower rate than identified in the PEIR, which would result in a slower increase in the concentration of selenium and other dissolved solids. Ultimately, impacts to the IID drains and Alamo River would occur as identified in the PEIR.<br><br>Significant, unavoidable water quality impacts related to increased selenium in the CVWD drains temporarily would be less than described in the PEIR, because CVWD would receive 90 KAF less Colorado River water for the first 15 years of the Project as a result of the changes to the Proposed Project and, therefore, less water would be conveyed in the drains. Between years 16 and 45, CVWD would receive 90 KAF more to compensate for the earlier decrease, and impacts ultimately would be as described in the PEIR since the same overall amount of water would be transferred. Similarly, significant unavoidable impacts related to an increase in total dissolved solids (TDS) in the lower aquifer groundwater would be temporarily lessened.<br><br>The Proposed Project could increase salinity of the Colorado River by as much as 1 mg/L below Hoover Dam and by as much as 8 mg/L at Imperial Dam. This adverse but less than significant impact would be slightly lessened as a result of the changes to the Proposed Project since less water would be diverted.<br><br>The changes to the Proposed Project would result in a lower salinity concentration in the Salton Sea than described in the PEIR due to the reduced change in flow to the Sea.<br><br>The only impact to groundwater from the changes to the Proposed Project would be a temporary reduction in the amount of Colorado River water used to recharge the groundwater basin in the Coachella Valley since less water would be delivered to the CVWD service area for the first 15 years of the Project. The use of Colorado River water would continue to be a beneficial impact, as described in the PEIR, and ultimately, the amount of water used to recharge groundwater would be as described in the PEIR. The minor groundwater impacts to the IID service area would be somewhat less than described in the PEIR because less water would be conserved and transferred. | No impact. |
| Land Use and Planning | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in any new construction or in any way physically | No impact. |

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Land Use and Planning *(continued)* | divide an established community, nor would they conflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect since they would not result in new or worsened significant environmental impacts. | |
| Mineral Resources | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in new construction or other ground disturbance and thus would not affect mineral resources. | No impact. |
| Noise | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in new construction or operational changes that could generate noise or expose people to noise. | No impact. |
| Population and Housing | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. None of the changes to the Proposed Project would affect population growth, nor would they alter the conclusions of the PEIR that the QSA would not foster economic or population growth or construction, would not remove obstacles to growth, would not require construction of additional community service facilities, and would not encourage or facilitate other activities that would significantly affect the environment. | No impact. |
| Public Services | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in increased population or otherwise require the provision of new or physically altered governmental facilities or result in the need for new or physically altered governmental facilities. | No impact. |
| Recreation | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in a population increase and thus would not increase the use of existing neighborhood and regional parks or other recreational facilities or result in the construction or expansion of recreational facilities. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would slightly lessen already less than significant impacts to recreational resources in this area, including sport fishing and other recreational activities dependent upon wildlife. The overall decline in mean | No impact. |

**Table 1.8-1. Summary of Checklist Determinations**

| *Environmental Impact Category* | *Potential Environmental Impacts of the Changes to the Proposed Project* | *Significance Determination* |
|---|---|---|
| Recreation *(continued)* | water surface elevation of the Salton Sea would be slightly less than described in the PEIR, which would slightly lessen the severity of the significant impact to recreational facilities. The PEIR stated that increased salinity would hasten the decrease in the number of fish that live in the Salton Sea, significantly affecting sport-fishing opportunities. The changes to the Proposed Project would result in a lower salinity concentration in the Salton Sea than described in the PEIR due to the reduced change in flow to the Sea, which would slightly lessen the severity of this significant impact. | |
| Transportation and Traffic | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. The changes to the Proposed Project would not result in population growth, new construction, or any other changes that would affect traffic. | No impact. |
| Utilities and Service Systems | The changes to the Proposed Project would not result in new significant impacts or a substantial increase in the severity of impacts identified in the PEIR. No additional wastewater or solid waste would be generated. No construction or expansion of storm water drainage facilities would be necessary. The changes to the Proposed Project seek to maintain an adequate water supply but would not in themselves create a demand for a water supply. Over the term of the project, Colorado River flow would be greater than or equal to that evaluated in the PEIR as a result of the changes to the Proposed Project. Thus, the median water surface elevation would generally decrease slightly less than described in the PEIR, which would slightly lessen the already less than significant impact to hydropower production at Headgate Dam and Parker Dam. | No impact. |

# QUANTIFICATION SETTLEMENT AGREEMENT

**by and among**

**IMPERIAL IRRIGATION DISTRICT,**

**a California irrigation district;**

**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,**

**a California metropolitan water district**

**and**

**COACHELLA VALLEY WATER DISTRICT,**

**a California county water district**

**Dated October 10, 2003**

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## QUANTIFICATION SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 10th day of October, 2003, by and among Imperial Irrigation District ("**IID**"), a California irrigation district, The Metropolitan Water District of Southern California ("**MWD**"), a California metropolitan water district, and Coachella Valley Water District ("**CVWD**"), a California county water district, each of which is at times referred to individually as "**Party**" and which are at times collectively referred to as "**Parties.**"

## RECITALS:

A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for potable and irrigation purposes.

B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and engaged in developing, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, California.

C. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for potable and irrigation purposes.

D. IID, MWD, PVID and CVWD are each contractors with the United States for delivery of Colorado River water as authorized by the Boulder Canyon Project Act (Act of December 21, 1928: 45 Stat.1057, as amended.)

E. Pursuant to those contracts, PVID, the Yuma Project (Reservation Division), IID and CVWD (collectively "the agricultural agencies") hold California's first three priorities to Colorado River water and are collectively entitled to the beneficial consumptive use as reasonably required of not to exceed 3,850,000 AFY. The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The sixth priority of 300,000 AFY is held by IID, CVWD and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin within California, which includes the lands within IID, CVWD and PVID. MWD and CVWD also have surplus water delivery contracts with the Secretary of the Interior.

F. MWD, IID and CVWD recognize that they have differences of opinion over various legal questions including the right to transfer water and the volumes of water to which the various right holders are entitled, but each Party wishes to go forward with this Agreement and associated agreements without regard to certain current or future differences, subject to the provisions of Article 4 hereof.

G. This Agreement and the Related Agreements are intended to consensually settle longstanding disputes regarding the priority, use and transfer of Colorado River water, to establish by agreement the terms for the further distribution of Colorado River water among the

Parties for up to seventy-five (75) years based upon the water budgets set forth herein, and to facilitate agreements and actions which will enhance the certainty and reliability of Colorado River water supplies available to the Parties and assist the Parties in meeting their water demands within California's apportionment of Colorado River water by identifying the terms, conditions and incentives for the conservation and distribution of Colorado River water within California.

H. IID seeks to settle disputes with CVWD and MWD and to use proceeds from the acquisition of Conserved Water by those Parties from IID to improve the reliability, efficiency and management of its Colorado River supply.

I. CVWD seeks to settle disputes with IID and MWD and to acquire Conserved Water for irrigation and potable uses to accommodate anticipated reductions in groundwater extraction.

J. MWD seeks to settle disputes with IID and CVWD and to ensure the reliability of its Colorado River supplies.

K. The Salton Sea Reclamation Act of 1998 expresses a federal interest in exploring whether the Salton Sea can be stabilized and reclaimed in the long term to preserve a healthy fish and wildlife resource habitat, yet recognizes that such stabilization and reclamation needs to accommodate the potential reduced inflows to the Salton Sea that may result from the conservation and transfer of conserved water by the IID.

L. The California State Legislature adopted and the Governor signed into law in 2003 three Acts (Stat. Chaps. 612, 611 and 654), commonly referenced as SB 317 (the "Kuehl Bill"), SB 277 (the "Ducheny Bill"), and SB 654 (the "Machado Bill") to facilitate implementation of this Agreement and the Related Agreements (as defined herein) (the Kuehl Bill, the Ducheny Bill and the Machado Bill are referenced collectively in this Agreement as the "QSA Legislation").

M. The State Water Resources Control Board, by its Order dated October 28, 2002, conditionally approved a joint petition, as amended, filed by IID and SDCWA for approval of the proposed transfer by IID of up to 200,000 AFY of Colorado River Water to SDCWA and for an acquisition of up to 100,000 AFY by CVWD or MWD and a petition filed by IID to change the point of diversion, place of use, and purpose of use under IID's Permit 7643 (as the same may be amended upon reconsideration, if any, the "SWRCB Order").

N. The Parties intend and believe that the Effective Date (defined below) of this Agreement and certain Related Agreements (as defined herein) will occur after the completion of review and adequate provision for any required mitigation under and in compliance with the California Environmental Quality Act, California Public Resources Code §§ 2100 et seq. ("CEQA").

## ARTICLE 1
## DEFINITIONS

**1.1 Definitions**. As used in this Agreement, the following terms have the following meanings:

**(1) Approval Agreement**. The agreement between IID, MWD, CVWD and PVID dated December 19, 1989, and entitled Approval Agreement.

**(2) 1998 IID/SDCWA Transfer Agreement**. The Agreement for Transfer of Conserved Water by and between IID and SDCWA dated April 29, 1998, as thereafter amended by IID and SDCWA through the Revised Fourth Amendment dated as of October 10, 2003, with such further changes thereto as IID and SDCWA may from time to time agree subject to the provisions of Section 4.8 hereof.

**(3) Acquisition Agreements**. Collectively, the 1998 IID/SDCWA Transfer Agreement, the CVWD/MWD Acquisition Agreement, the IID/MWD Acquisition Agreement, the IID/CVWD Acquisition Agreement, and the MWD/CVWD Transfer and Exchange Agreement.

**(4) AF**. Acre-foot, a measure of volume.

**(5) AFY**. Acre-feet per Calendar Year.

**(6) All-American Canal**. The canal and appurtenant works from Imperial Dam to the Imperial and Coachella Valleys authorized in Section 1 of the Boulder Canyon Project Act.

**(7) Allocation Agreement**. The Agreement dated as of the Closing Date among the Secretary and the other parties thereto, concerning the allocation of Conserved Water created as a result of the lining of the All-American Canal and the Coachella Canal, with such changes to such agreement as may be from time to time agreed upon in writing in accordance with such agreement.

**(8) Assignment (or Assign)**. Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

**(9) BOR**. The United States Bureau of Reclamation.

**(10) Business Day**. A day that is not a Saturday, Sunday, or federal or California state legal holiday.

**(11) Calendar Year**. The twelve (12)-month period running from January 1 through December 31.

(12) **Calendar Year Quarter**. Any of the four three-month periods (i) January through March; (ii) April through June; (iii) July through September; or (iv) October through December.

(13) **CEQA**. As defined in Recital N.

(14) **Closing Date**. October 10, 2003, the date as of which all Parties Execute this Agreement and all Rrelated Agreements dated as of the Closing Date.

(15) **Coachella Canal**. The Coachella branch of the All-American Canal leading from the All-American Canal to the CVWD service area authorized in Section 1 of the Boulder Canyon Project Act.

(16) **Colorado River Aqueduct**. The aqueduct system owned and operated by MWD and extending from Lake Havasu to Lake Mathews in Riverside County.

(17) **Conserved Water**. Water made available for acquisition under this Agreement and the Related Agreements attributable to: (i) Temporary Land Fallowing or crop rotation, if an allowed use is for irrigation, or (ii) projects or programs that enable the use of less water to accomplish the same purpose or purposes of allowed use; provided, however, that such term does not include water attributable to:

(a) the activities described in (i) or (ii) above not voluntarily undertaken; or

(b) the activities described in (i) above voluntarily undertaken in exchange for money payment or other valuable consideration received from a governmental source other than SDCWA, MWD, CVWD or the California Department of Water Resources ("DWR"); and

(c) the resulting volume of reduced water produced from (a) or (b) above cannot be used anywhere within the IID Service Area.

(18) **Consumptive Use**. The diversion of water from the main stream of the Colorado River, including water drawn from the main stream by underground pumping, net of measured and unmeasured return flows.

(19) **Conveyance Loss**. The actual loss of water to evaporation, seepage, or other similar cause resulting from any transportation of Conserved Water from Imperial Dam to the CVWD service area or to the MWD service area, as the case may be.

(20) **CVWD**. As defined in Recital C.

(21) **CVWD/MWD Acquisition Agreement**. The agreement between CVWD and MWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as CVWD and MWD may from time to time agree subject to the provisions of Section 4.8 hereof.

(22) **CVWD/MWD Supplemental Agreement**. The agreement between CVWD and MWD dated December 19, 1989, and entitled Agreement to Supplement Approval Agreement.

(23) **Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement**. The date on which the Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement becomes effective.

(24) **NEPA.** The National Environmental Policy Act.

(25) **Delegation (or Delegate)**. Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the obligations or liabilities in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(26) **Intentionally Not Used**.

(27) **Effective Date**. The date on which the United States District Court, Southern District of California, Case No. 03cv0069w (JFS) executes the Stipulation and Order dismissing the case IID v. United States, et al..

(28) **Environmental Cost Sharing, Funding and Habitat Conservation Plan Development Agreement or ECSA**. The agreement among IID, CVWD and SDCWA dated as of the Closing Date, concerning, among other things, the sharing and payment of certain environmental review and mitigation costs pertaining to this Agreement and certain Related Agreements with such changes thereto as such parties may from time to time agree in writing.

(29) **QSA Legislation.** As defined in Recital L.

(30) **Execution or Executed**. The execution and delivery of this Agreement and the Related Agreements dated as of the Closing Date by a duly-authorized representative of a party thereto, on behalf of such party, without conditions or reservations of any kind, except as may be expressly set forth in the agreement thereby executed and delivered.

(31) **Flood Control Release**. The release of water from Lake Mead and the operation of Hoover Dam for flood control purposes pursuant to the reservoir operating criteria specified in the February 8, 1984 Field Working Agreement between the U.S. Army Corps of Engineers and the BOR, and the U.S. Army Corps of Engineers regulations contained in Volume 33 of the Code of Federal Regulations, Part 208.11.

(32) **Force Majeure**. An event, not within the control of the Parties, which materially and adversely affects the performance of their respective obligations and duties to properly construct, operate, establish, implement or maintain the means of creating or receiving deliveries of Conserved Water, including a Transfer Stoppage as defined herein.

(33) **GDPIPD Inflation Index**. For any Calendar Year Quarter after the fourth Calendar Year Quarter of 1998, the ratio of the published value for that quarter of the Gross Domestic Product Implicit Price Deflator published quarterly by the Bureau of Economic

Analysis of the United States Department of Commerce in the Survey of Current Business, divided by the value of the Gross Domestic Product Implicit Price Deflator for the fourth Calendar Year Quarter of 1998. The GDPIPD Inflation Index for future quarter "n" is calculated by the following formula:

$$\frac{\text{GDPIPD Inflation Index Quarter "n"}}{\text{GDPIPD Inflation Index Fourth Quarter 1998}}$$

**(34)** **IID**. As defined in Recital A.

**(35)** **IID Service Area.** That area of Imperial Valley described in IID's Section 5 Contract as in effect on October 15, 1999.

**(36)** **IID/CVWD Acquisition Agreement**. The agreement between IID and CVWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as IID and CVWD may from time to time agree subject to the provisions of Section 4.8 hereof.

**(37)** **IID/MWD 1988 Agreement**. The agreement between IID and MWD dated December 22, 1988, and entitled Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water.

**(38)** **IID/MWD Acquisition Agreement**. The agreement between IID and MWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as IID and MWD may from time to time agree subject to the provisions of Section 4.8 hereof.

**(39)** **Implementation Agreement**. The Colorado River Water Delivery Agreement among the Secretary, IID, CVWD, MWD and SDCWA, dated as of the Closing Date, containing the terms of agreement with the Secretary regarding this Agreement and the Related Agreements in taking actions concerning the Colorado River, with such changes thereto as the parties thereto may from time to time agree.

**(40)** **Improvement District No. 1**. That area of land described in Exhibit "B" of the Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water between the United States and Coachella Valley County Water District dated October 15, 1934, as heretofore or hereafter modified under Section 15 of the Agreement of Compromise between Imperial Irrigation District and Coachella Valley County Water District dated February 14, 1934; provided, however, that any modification that requires IID's consent shall also require MWD's consent for purposes of this definition.

**(41)** **Inadvertent Overrun and Payback Policy**. The BOR program described in and contemplated under Section 6.2(4) hereof.

**(42)** **Inflation Index**. For any Calendar Year Quarter ending after January 1, 1999, the arithmetic average of the PPI Inflation Index and the GDPIPD Inflation Index. The Inflation Index for any future Calendar Year Quarter "n" is calculated by the following formula:

$$I_n = \frac{\text{(PPI Inflation Index + GDPIPD Inflation Index)}}{2}$$

**(43) Interim Surplus Guidelines**. The federal guidelines described in Section 6.2(5) hereof.

**(44) MWD**. As defined in Recital B.

**(45) MWD/CVWD Delivery and Exchange Agreement**. The agreement between MWD and CVWD dated as of the Closing Date regarding the transfer by MWD to CVWD of thirty-five thousand (35,000) AFY of MWD's State Water Project entitlement and the exchange of such water for Colorado River water, with such changes thereto as MWD and CVWD may from time to time agree subject to the provisions of Section 4.8 hereof.

**(46) "N" Dollars**. That nominal dollar amount in a future Calendar Year Quarter "n" which, when adjusted based on the Inflation Index ("$I_n$") is equivalent to the specified dollar amount in the Agreement measured as of the Year Z specified in the Agreement. The adjustment is calculated according to the following formula:

"N" Dollars = Nominal Dollar Amount = $zzz(Year Z) x Inflation $Index_n$

**(47) Neutral County**. Any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura.

**(48) Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement**. The termination of the 1998 IID/SDCWA Transfer Agreement after the Effective Date,

(i) [Intentionally not used]

(ii) by reason of the termination pursuant to Section 4.1(c) of the 1988 IID/SDCWA Transfer Agreement; or

(iii) by reason of the expiration of the Initial Term without the commencement of a Renewal Term in Year 46, as defined in the 1998 IID/SDCWA Transfer Agreement, or if renewed, the expiration of the Renewal Term.

**(49) QSA**. This Agreement, the Quantification Settlement Agreement.

**(50) PPI Inflation Index**. For the last month of any Calendar Year Quarter ending after January 1, 1999, the ratio for the published value for that month of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) published by the United States bureau of Labor Statistics, divided by the published value for December 1998. The PPI Inflation Index for future month "n" is calculated by the following formula for published values:

PPI month "n"
PPI December 1998

(51) **Priority "Z"**. The contractual priority level of the right to Colorado River water by the California agencies with Section 5 Contracts, with "Z" varying between Priority 1 and Priority 7, as set forth in the provisions of Article I, Sections 1-7 of the Seven-Party Agreement of 1931, which provisions are included in each Section 5 Contract.

(52) **QSA-JPA.** The QSA Joint Powers Agreement dated as of the Closing Date among IID, CVWD, SDCWA and the State of California or the Joint Powers Authority established thereby, as the context requires.

(53) **PVID**. The Palo Verde Irrigation District, an irrigation district organized under the Palo Verde Irrigation District Act, §§ 33-1 et seq. of the Appendix to the California Water Code.

(54) **Related Agreements**. The Acquisition Agreements, the Allocation Agreement, the Implementation Agreement, the Amendments to the IID/MWD 1988 Agreement, the 1989 Approval Agreement and the CVWD/MWD Supplemental Agreement, the MWD/CVWD Delivery and Exchange Agreement, the ECSA, the QSA-JPA, the agreements listed on Exhibits A and B hereto, and any other agreements, amendments and waivers entered into or adopted by or with the written consent of all Parties in connection with this Agreement or made pursuant to Section 4.8 hereof. The Parties recognize and agree that the performance under, or the effectiveness of, each of the agreements listed on Exhibit B, even though Executed as of the Closing Date, is or may be contingent on the receipt of various permits, approvals and consents, as specified in those agreements.

(55) **SDCWA**. The San Diego County Water Authority, a California county water authority incorporated under the California County Water Authority Act, §§ 45-1 et seq. of the Appendix to the California Water Code.

(56) **SDCWA/MWD Exchange Agreement**. The Agreement for the Exchange of Water dated November 10, 1998 between SDCWA and MWD, as amended and restated in its entirety by the Agreement between SDCWA and MWD dated as of the Closing Date.

(57) **Secretary**. The Secretary of the United States Department of the Interior, and duly appointed successors, representatives and others with properly delegated authority.

(58) **Section 5 Contract**. A contract between the Secretary and a California agency for permanent service for the delivery of Colorado River water, established pursuant to Section 5 of the Boulder Canyon Project Act, 43 U.S.C. § 617d.

(59) **SWRCB**. The California State Water Resources Control Board.

(60) **SWRCB Order**. As defined in Recital M.

**(61)** **Temporary Land Fallowing**. The creation of Conserved Water from the retirement of land from crop production activities for a period starting no earlier than the Effective Date and ending on or prior to the Termination Date.

**(62)** **Termination Date**. The Termination Date is the earlier of (i) midnight on October 12, 2003, if the Effective Date has not by then occurred; (ii) the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement; (iii) the end of the twelfth ($12^{th}$) calendar month following the date of aTransfer Stoppage, unless such Transfer Stoppage has been overturned or modified or remedied to the satisfaction of each affected Party, or unless the Parties, SDCWA and the Secretary have agreed to continue this Agreement and the Related Agreements notwithstanding the continuation of such Transfer Stoppage; or (iv) December 31, 2077.

**(63)** **Transfer Stoppage**. A transfer or acquisition of Conserved Water pursuant to this Agreement that is ordered to stop by virtue of an injunction or other order issued by a court or administrative agency acting within the scope of its jurisdiction.

**(64)** **"Year ____" (e.g., Year 25.)**. One in the series of Calendar Years occurring after the Effective Date; provided, however, that Year 1 shall commence on the Effective Date and end on December 31, 2003.

**1.2** **Rules of Construction and Word Usage**. Unless the context clearly requires otherwise:

**(1)** The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;

**(2)** The Exhibits and Attachments attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;

**(3)** The plural and singular numbers include the other;

**(4)** The masculine, feminine, and neuter genders include the others;

**(5)** "Shall," "will," "must," and "agrees" are each mandatory;

**(6)** "May" is permissive;

**(7)** "May not" is prohibitory;

**(8)** "Or" is not exclusive;

**(9)** "Includes" and "including" are not limiting;

**(10)** "Between" includes the ends of the identified range;

**(11)** "Person" includes any natural person or legal entity; and

(12) "Transfer," when used herein or in the Related Agreements in relation to a transaction involving Conserved Water, does not mean or imply that the Parties agree as to whether any such transaction is properly characterized as a transfer under California law or whether such transaction is subject to SWRCB jurisdiction.

## ARTICLE 2
## WATER BUDGETS

### 2.1 IID Water Budget.

(1) **Priority 3a Cap**. IID's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three million one hundred thousand (3,100,000) AFY at Imperial Dam, **less** (i) the Conserved Water made available by IID for use by others hereunder, and (ii) the water made available under Paragraph (2) of this Section 2.1 to the extent charged to Priority 3a, and **plus** any Conserved Water made available to IID from the lining of the All-American and Coachella Canals, as provided under and subject to the terms and conditions of the Allocation Agreement. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy. Any Colorado River water permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's**. IID shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of eleven thousand five hundred (11,500) AFY. IID's obligation to forbear use of water for this purpose may be charged, at IID's option, to its rights under Priorities 6a, 7 or 3a as available. In the event it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **IID Priority 6a Forbearance and Priority 7 Use**. IID agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use subject to any rights that PVID might have, except as may otherwise be required under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition Mechanism and Location**. IID performs its obligations to make Conserved Water available for CVWD and MWD acquisition as contemplated by this

Agreement by reducing its Consumptive Use at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition. CVWD and MWD each accept responsibility for any arrangements and facilities necessary to divert the Conserved Water made available to either of them and for any Conveyance Loss. CVWD and MWD have no duty to divert any or all of the Conserved Water. The payments by CVWD and MWD to IID under their respective Acquisition Agreements are for the conservation and acquisition of the Conserved Water, whether or not CVWD or MWD actually diverts that Conserved Water.

(5) **Conserved Water for CVWD**. IID shall make Conserved Water available to CVWD under and subject to the terms and conditions of the IID/CVWD Acquisition Agreement and the Implementation Agreement.

(6) **Conserved Water for SDCWA**. The terms and conditions applicable to IID's conservation and transfer of Conserved Water to SDCWA contemplated by this Agreement shall be as set forth in the 1998 IID/SDCWA Transfer Agreement.

(7) **Conserved Water for MWD**. IID shall make Conserved Water available to MWD under and subject to the terms and conditions of the IID/MWD Acquisition Agreement.

(8) **Conserved Water from Canal Lining Projects**. Conserved Water resulting from the lining of the All-American Canal and the Coachella Canal shall be made available as provided under and subject to the terms and conditions of the Allocation Agreement.

(9) **Conservation Methods**. The creation of Conserved Water by IID utilizing efficiency improvements or fallowing for acquisition, transfer or lessening environmental impacts, shall be as described in the Compromise IID/SDCWA and QSA Delivery Schedule attached hereto as Exhibit C.

2.2 **CVWD Water Budget.**

(1) **Priority 3a Cap**. CVWD's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three hundred thirty thousand (330,000) AFY at Imperial Dam, **less** (i) Conserved Water made available from the lining of the Coachella Canal, as provided under and subject to the terms and conditions of the Allocation Agreement, and (ii) the water made available under paragraph (2) of this Section 2.2 to the extent charged to Priority 3a. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy and the Decree Accounting Program. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's**. CVWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of three thousand (3,000) AFY. CVWD's obligation to forbear use of water for this purpose may

be charged, at CVWD's option, to its rights under Priorities 6, 7 or 3 as available. In the event that it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between fourteen thousand five hundred (14,500) AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **CVWD Priority 6a Forbearance and Priority 7 Use**. CVWD agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, subject to any rights that PVID might have, except as may otherwise be provided under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in the IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition From IID**. The terms and conditions applicable to the acquisition of Conserved Water by CVWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/CVWD Acquisition Agreement.

(5) **Acquisition From MWD**. The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

2.3 **MWD Water Budget.**

(1) **MWD Priority 4 and 5 Cap**. MWD's Consumptive Use entitlements under Priorities 4 and 5 are capped by this Agreement at five hundred fifty thousand (550,000) AFY, and six hundred sixty-two thousand (662,000) AF, respectively, at Lake Havasu, less the water made available under paragraph (2) of this Section 2.3 to the extent charged to Priority 4 or 5. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy. Water made available by MWD to CVWD in any Year pursuant to this Agreement shall be charged at MWD's option to any water available to MWD in that Year. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's**. MWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water in excess of fourteen thousand

five hundred (14,500) AFY. MWD's obligation to forbear Consumptive Use for this purpose shall be charged at MWD's option to any Priority pursuant to which MWD has water available.

(3) **[Intentionally Not Used]**

(4) **Priorities 1 & 2 Consumptive Use Over and Under 420,000 AF**. MWD shall be responsible when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, for repayment of any overrun as a result of aggregate use by Priorities 1, 2 and 3b in excess of four hundred twenty thousand (420,000) AFY; and to the extent that Priorities 1, 2 and 3b use is less than four hundred twenty thousand (420,000) AFY, MWD shall have the exclusive right to Consumptively Use such unused water.

(5) **Acquisitions From IID**. The terms and conditions applicable to the acquisition of Conserved Water by MWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/MWD Acquisition Agreement and the Allocation Agreement.

(6) **Acquisition From CVWD**. The terms and conditions of the acquisition of water by MWD from CVWD, as contemplated by this Agreement, shall be as set forth in the MWD\CVWD Transfer and Exchange Agreement and the Allocation Agreement.

(7) **Acquisition by CVWD**. The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

(8) **Contractual Commitment to SDCWA**. The terms and conditions of the delivery of certain Conserved Water to SDCWA by MWD shall be as set forth in the SDCWA/MWD Exchange Agreement.

## ARTICLE 3
## TERM/CLOSING/EFFECTIVE DATE

**3.1 Term.** This Agreement shall commence on the Effective Date and shall terminate on the Termination Date.

**3.2 Closing Date**. The Execution of this Agreement and the Execution of each of the Related Agreements that is dated as of the Closing Date shall be deemed to have been Executed simultaneously at 12:00 PM PST on the Closing Date. No Party shall take a position in any administrative, judicial or legislative forum contrary to or inconsistent with the foregoing.

**3.3 Effective Date**. Notwithstanding any other provision of this Agreement, the obligations of the Parties under Articles 2 and 4, and under the related provisions of the Acquisition Agreements and the Implementation Agreement contemplated by this Agreement, shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

**3.4 Early Termination.**

**(1)** In the event of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement:

(i) **Advance Notice**. IID shall, to the extent reasonably possible, give the other Parties, SWRCB, BOR and the Secretary at least twelve (12) months advance written notice of such event together with a written explanation of the underlying factors and calculations;

(ii) **[Intentionally Not Used]**

(iii) **[Intentionally Not Used]**

**(2)** In the event of a Transfer Stoppage, the Parties shall proceed in the manner required under Section 6.1 hereof and shall seek to overturn, modify or otherwise remedy such Transfer Stoppage to the satisfaction of each Party materially affected thereby. If the Parties are unable to do so, they shall in good faith negotiate among themselves and with the SDCWA and the Secretary to determine whether to continue this Agreement and the Related Agreements that are coterminous with this Agreement notwithstanding the Transfer Stoppage and, if so, with what modifications if any.

**(3) [Intentionally Not Used]**

**(4) Effect of Termination**. As of the Termination Date, neither the terms of this Agreement nor the conduct of the Parties in performance of this Agreement shall be construed to enhance or diminish the rights of any of the Parties as such rights existed at the Closing Date, including any enhancement or diminishment by reason of an alleged application of common law principles of reliance, estoppel, intervening public use, domestic or municipal priority, shortage or emergency, or equitable apportionment. Notwithstanding any provision to the contrary in this Agreement, or in the Implementation Agreement, all water budget components contemplated under Article 2 of this Agreement and all state and federal approvals, permits and water contract amendments issued or adopted in connection therewith, other than environmental related permits with continuing mitigation obligations, shall thereupon terminate by consent of each of the Parties, which consents are hereby given, and which consents shall be reaffirmed in writing at the request of any Party, and the rights of the Parties shall revert to the status quo as though the Parties had never entered into, or intended to enter into, this Agreement, the Acquisition Agreements, or the Implementation Agreement. Notwithstanding anything to the contrary in this Agreement, the parties stipulate and agree that the provisions of Section 4.1 of this Agreement, the provisions of Section 16.2 of the IID/MWD Acquisition Agreement, the provisions of Section 14.3(2) of the IID/CVWD Acquisition Agreement, and the provisions of Sections 14.3 and 14.4 of the 1998 IID/SDCWA Transfer Agreement will remain in force and effect.

## ARTICLE 4
## ADDITIONAL SETTLEMENT PROVISIONS

**4.1 General Settlement Provisions; No Admission of Settlement Terms; Reservation of Rights and Claims.**

The Parties do not agree on the nature or scope of their relative rights to the delivery, use or transfer of Colorado River water. This Agreement is a consensual, comprehensive settlement arrangement acceptable to all Parties. It does not reflect any Party's rights or claims singularly or collectively, nor does it reflect the anticipated, predicted or possible outcome to any of the many disputes between the Parties if they were to be resolved without consensus. The Parties acknowledge that this Agreement is, in fact, a settlement and thus may not be used for any purpose in any judicial, legislative or administrative proceeding, and may not be used in any future attempt to reallocate water or water rights or to reorder the priorities of the Parties upon the termination of this Agreement. Subject to the provisions of this Agreement which compromise such matters, the legal rights, duties, obligations, powers and claims of each Party are preserved and may be acted upon by any Party during the term of this Agreement.

**4.2 All-American Canal and Coachella Canal Lining Projects Conserved Water.**

(1) The Parties agree that sixty seven thousand seven hundred (67,700) AFY and twenty six thousand (26,000) AFY of Conserved Water from the completed All-American Canal Lining Project and the Coachella Canal Lining Project, respectively, shall be distributed subject to the terms of the Allocation Agreement.

(2) **[Intentionally Not Used]**

(3) **[Intentionally Not Used]**

(4) **[Intentionally Not Used]**

(5) **[Intentionally Not Used]**

**4.3 Other Acquisitions of Colorado River Water**. During the period from the Effective Date to the Termination Date, the Parties may acquire Colorado River water from any person, without objection by any of the Parties, so long as any such acquisition is not inconsistent with any other term of this Agreement or the Related Agreements and does not materially reduce the water available to the Parties.

**4.4 [Intentionally Not Used]**

**4.5 CVWD Utilization of Water.**

(1) Other than as provided in Section 3.6 of the IID/CVWD Acquisition Agreement, CVWD shall not utilize its water budget to facilitate any water use outside of Improvement District No. 1 other than for direct and in lieu groundwater recharge, and shall use its best efforts to utilize its water budget to address the groundwater overdraft problem in Improvement District No. 1 and to implement a program that is designed to achieve a safe yield

within Improvement District No. 1 by the end of CVWD's water budget ramp-up in approximately Year 30.

(2) IID and MWD shall not object to the utilization of Colorado River water in the Coachella Valley, but outside Improvement District No. 1, in order to maximize the effectiveness of Improvement District No. 1's water use and recharge programs.

(3) CVWD shall make no claim as a matter of right to any additional Colorado River water in Priorities 3 or 6.

(4) This Agreement does not affect CVWD's rights under its surplus contract with the Secretary dated March 6, 1987, including its right to use water delivered under that contract anywhere within its boundaries.

**4.6 CVWD Groundwater Storage of IID Water**. Subject to the physical availability of storage in the Coachella Valley after accounting for the storage to be utilized by CVWD for the MWD/CVWD conjunctive use program, if implemented, CVWD will provide groundwater storage for IID's use in accordance with the IID/CVWD Acquisition Agreement.

**4.7 Shortage and Sharing of Reduced Water Availability.** If for any reason there is less than 3.85 million (3,850,000) AF available to Priorities 1, 2 and 3 in any Year, there will be no termination of this Agreement. Shortages will be shared pursuant to the particular provisions of the Acquisition Agreements and the Allocation Agreement.

**4.8 Amendments to Acquisition Agreements**. The Parties to each Acquisition Agreement shall have the right to amend that Agreement from time to time without the consent of any other Party hereto (a "non-signatory Party"); provided, however, that prompt notice and a copy of any such amendment is provided to each non-signatory Party, the Secretary, BOR and, with respect to the transfers to SDCWA contemplated under the 1998 IID/SDCWA Transfer Agreement and acquisitions from IID by CVWD under the IID/CVWD Acquisition Agreement, SWRCB; and provided, further, that no such amendment shall be given any force or effect, or be binding on any Party, if:

(1) such amendment would affect in any respect the rights of any non-signatory Party to Colorado River water; or

(2) such amendment could reasonably have a significant adverse effect on the interests of a non-signatory Party; unless or until

(3) in the circumstances of either (1) or (2), the written consent to such amendment shall have been obtained from each non-signatory Party, which consent shall not be unreasonably withheld and, if determined to have been unreasonably withheld, shall be effective retroactively to the date originally requested.

**4.9 MWD Mitigation of Certain Effects of Interim Surplus Guidelines**. In the event that Priority 3a Consumptive Use by IID and CVWD, consistent with and as adjusted by this Agreement, is reduced as a direct result of the application and operation of the Interim Surplus Guidelines, MWD will assume responsibility for any required payback of any water use

overruns by IID and CVWD resulting from such reduction. MWD's aggregate payback obligation under this Section 4.9 shall be limited to an amount equal to the aggregate amount of surplus water allocated to and Consumptively Used by MWD under Full Domestic Surplus and/or Partial Domestic Surplus conditions, as determined by the Secretary under the Interim Surplus Guidelines.

**4.10 [Intentionally Not Used]**

**4.11 MWD Interim Surplus Guidelines Agreements With Arizona and Southern Nevada Water Authority**. In connection with the implementation of the Interim Surplus Guidelines, MWD and the State of Arizona may enter into an Interim Surplus Guidelines Agreement and MWD and the Southern Nevada Water Authority have entered into an Interim Surplus Guidelines Agreement. Pursuant to such agreements MWD may be required to forbear delivery of a determinable quantity of Colorado River water in certain circumstances involving the Secretary's determination of a shortage condition in accordance with such Guidelines. IID and CVWD hereby agree to forbear exercise of any right or claim under Priorities 6 and 7, including any right or claim under this Agreement or a Related Agreement, to such water to the extent of any such required forbearance by MWD.

**4.12 [Intentionally Not Used]**

**4.13 [Intentionally Not Used]**

**4.14 [Intentionally Not Used]**

**4.15 [Intentionally Not Used]**

**4.16 Public Awareness Program**. The Parties will each implement and maintain a water conservation public awareness program.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

**5.1 IID's Representations and Warranties.**

**(1) Authority**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) IID has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by IID and the performance by IID of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which IID is a party or by which IID is bound.

**(2) Signatories**. The persons executing this Agreement on behalf of IID have the full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on IID's behalf

personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of IID, enforceable against IID in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.1, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement.

(5) **Notice of Developments**. IID agrees to give prompt notice to the Parties if IID discovers that any of its own representations and warranties were untrue when made.

5.2 **CVWD's Representations and Warranties.**

(1) **Authority**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) CVWD has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by CVWD and the performance by CVWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which CVWD is a party or by which CVWD is bound.

(2) **Signatories**. The persons executing this Agreement on behalf of CVWD have the full power and authority to bind CVWD to the terms of this Agreement. In addition, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of CVWD, enforceable against CVWD in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.2, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to CVWD's knowledge, threatened against or affecting CVWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments**. CVWD agrees to give prompt notice to the Parties if CVWD discovers that any of its own representations and warranties were untrue when made.

**5.3 MWD's Representations and Warranties.**

(1) **Authority**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) MWD has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by MWD and the performance by MWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which MWD is a party or by which MWD is bound.

(2) **Signatories**. The persons executing this Agreement on behalf of MWD have the full power and authority to bind MWD to the terms of this Agreement. In addition, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of MWD, enforceable against MWD in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.3, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to MWD's knowledge, threatened against or affecting MWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments**. MWD agrees to give prompt notice to the Parties if MWD discovers that any of its own representations and warranties were untrue when made.

## ARTICLE 6
## SPECIAL CONSIDERATIONS

**6.1 QSA Premises**. This Agreement and the Related Agreements that are Executed on the Closing Date are premised on, among other things, the special considerations set forth in Section 6.2. IID, MWD and CVWD shall each proceed cooperatively, in good faith, and with reasonable diligence and effort to secure, protect and defend each of such special considerations for which and to the extent it has responsibility under this Agreement or a Related Agreement.

**6.2 Special Considerations.**

**(1) [Intentionally Not Used]**

**(2) Environmental Matters.**

(i) **Environmental Review**. All environmental review and assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing the same have been completed, to the extent required to authorize implementation of the activities contemplated by this Agreement. An environmental review process will be deemed "completed" only when all required Notices of Determination pursuant to CEQA have been duly filed; all required Records of Decision pursuant to NEPA have been duly issued; all administrative appeal periods have expired; all statutes of limitation for filing an action challenging any environmental process pursuant to CEQA have expired; as of the deadline for satisfying these conditions, no action challenging any environmental process has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the environmental review process and allows implementation of the covered activities and all judicial appeal periods have expired. The environmental review processes described above shall include, but are not limited to:

**(a)** The federal EIS in connection with the Implementation Agreement, the Inadvertent Overrun and Payback Policy and this Agreement, to be prepared by BOR as the lead agency;

**(b)** The EIS relating to the Interim Surplus Guidelines, prepared by BOR as the lead agency;

**(c)** The program EIR relating to this Agreement, to be prepared by IID, MWD, CVWD and SDCWA as co-lead agencies;

**(d)** The joint EIR/EIS relating to the conservation and transfer by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3 cap, to be prepared by IID as the lead agency under CEQA and BOR as the lead agency under NEPA;

**(e)** The joint EIR/EIS relating to the lining of the Coachella Canal, to be prepared by CVWD as the lead agency under CEQA, and by BOR as the lead agency under NEPA.

**(f)** Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resources plan and any other documents required to allow implementation of the All-American Canal Lining project pursuant to a certified EIR/EIS for that project;

**(g)** Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resource plan and any other documents required to allow implementation of the Coachella Canal Lining project pursuant to a certified EIR/EIS for that project; and

**(h)** The program EIR for the CVWD Groundwater Recharge project, to be prepared by CVWD as the lead agency.

(ii) **Resource Approvals**. All permits, approvals, authorizations, opinions, assessments and agreements pursuant to the federal Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA") and any other federal or state environmental resource protection laws, and applicable federal or state regulations implementing the same (collectively "Resource Approvals"), have been finalized, to the extent required by such statutes or regulations or deemed necessary or appropriate by the U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), BOR or IID to document compliance therewith and to authorize implementation of the 1998 IID/SDCWA Transfer Agreement, the conservation by IID of up to three hundred three thousand (303,000) AFY and IID's Priority 3a cap. A Resource Approval shall be deemed "final" only when all required environmental review has been completed as described in Section 6.2(2)(a) above; final action has been taken and all required documents have been approved and executed by the resource agencies and the applicant; all required biological assessments and biological opinions have been issued; all administrative appeal periods have expired; as of the deadline for satisfying these conditions, and no action challenging any Resource Approval has resulted in a Transfer Stoppage. The Resource Approvals described above shall include, but are not limited to, all required approvals by federal and state agencies of:

**(a)** The change in the point of diversion on the Colorado River and transfer of up to three hundred three thousand (303,000) AFY of water to be conserved by IID.

**(b)** Incidental take authorization pursuant to ESA and CESA, to the extent required to implement the change in the point of diversion on the Colorado River, the water transfers and acquisitions described above, the Interim Surplus Criteria, the Inadvertent Overrun and Payback Policy, the All-American Canal Lining project, and the Coachella Canal Lining project. The effective date for the CESA permit shall be January 1, 2004, provided however that the CDFG acknowledges in writing by the Closing Date that activities to occur in Year 1 pursuant to this Agreement and the Related Agreements will not result in any take of any species requiring a "take permit."

(iii) **Party Approvals of Environmental Requirements**. Each Party, by action of its governing board, has approved and accepted the terms, conditions and mitigation measures of the environmental review processes described in Section 6.2(2)(i) above and the Resource Approvals described in Section 6.2(2)(ii) above (collectively, "Environmental Requirements"), to the extent such Party is responsible, in whole or in part, for compliance, performance or payment of the costs of such Environmental Requirements.

**(3)** **Transfer Stoppage**. The absence of any Transfer Stoppage during the term of this Agreement.

**(4)** **Inadvertent Overrun and Payback Policy**. The adoption and continuation by BOR of standards and procedures for an Inadvertent Overrun and Payback

Policy that is in all material respects in conformity with the current Program, subject to modification only as and to the extent contemplated under the Implementation Agreement.

(5) **Reinstatement of Interim Surplus Guidelines.** The reinstatement and continuation of the terms of the Interim Surplus Guidelines, originally implemented pursuant to the Secretary's Record of Decision dated January 16, 2001, by the Closing Date.

(6) **[Intentionally Not Used]**

(7) **[Intentionally Not Used]**

(8) **[Intentionally Not Used]**

(9) **[Intentionally Not Used]**

(10) **[Intentionally Not Used]**

(11) **SWRCB Approval**. The adoption and continuation in full force and effect of the SWRCB Order, as the same may be amended from time to time in a manner and to the extent acceptable to the Parties.

(12) **[Intentionally Not Used]**

(13) **QSA Legislation.** The continuation of the QSA Legislation in full force and effect without material modification.

(14) **[Intentionally Not Used]**

(15) **Litigation**. Any pending or threatened litigation, including disputes disclosed in Appendices 5.1, 5.2 or 5.3 hereof, that would, if finally determined in favor of any complaining person or person, materially and adversely affect (a) the ability of any Party to perform under this Agreement or the Related Agreements (b) the continuing efficacy of the Inadvertent Overrun and Payback Policy, the Interim Surplus Guidelines, or the SWRCB's final order of approval referenced in Section 6.2 (11) hereof, or (c) the ability of the Secretary (or the Secretary's delegate) to perform under the Implementation Agreement, shall become the subject of one or more joint defense agreements among two or more of the Parties and, where applicable SDCWA, reasonably allocating responsibilities to a Party or Parties or SDCWA for the defense of (or intervention in) such litigation and, where appropriate, for the potential consequences of any materially adverse final determination of such litigation or otherwise specifying the consequences of any such determination.

(16) **Failure of Consideration**. The Parties hereby stipulate and agree that a material failure of any special considerations set forth in Section 6.2 shall constitute an irreparable injury to each Party and shall also constitute irreparable harm to the public interest, whether or not there has been a related breach of Section 6.1 by any Party.

**6.3 Waiver of Compliance**. No Party shall waive compliance with CEQA, NEPA or other requirements under applicable laws.

## ARTICLE 7
## [INTENTIONALLY NOT USED]

**7.1 [Intentionally Not Used]**

**(1) [Intentionally Not Used]**

## ARTICLE 8
## [INTENTIONALLY NOT USED]

**8.1 [Intentionally Not Used]**

**(1) [Intentionally Not Used]**

**(2) [Intentionally Not Used]**

## ARTICLE 9
## [INTENTIONALLY NOT USED]

**9.1 [Intentionally Not Used]**

**(1) [Intentionally Not Used]**

**(2) [Intentionally Not Used]**

**(3) [Intentionally Not Used]**

## ARTICLE 10
## REMEDIES

**10.1 Specific Performance**. Each Party recognizes that the rights and obligations of the Parties under this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with this Agreement, the other Parties will likely suffer harm curable only by the imposition of an injunction requiring specific performance. Thus, each of the Parties agrees that any breach of this Agreement by any Party shall entitle the non-breaching Parties, or any one of them, to injunctive relief, including but not limited to a decree of specific performance, in addition to any other remedies at law or in equity that may be available in the circumstances.

**10.2 Cumulative Rights and Remedies**. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege

precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

**10.3 Action or Proceeding between the Parties**. Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against another Party would, under § 394(a) of the CCP, as a matter of law be subject to:

**(1)** being transferred to a Neutral County, or instead

**(2)** having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.

**(3)** In the event an action is filed by any Party against another Party or Parties to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:

**(4)** Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action;

(i) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(ii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(iii) Acknowledges that this Agreement, and in particular this Section 10.3, may be submitted to the court as part of the moving papers.

**(5)** Nothing in this Section 10.3, however, shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or shall operate to waive any other rights.

## ARTICLE 11
## GENERAL PROVISIONS

**11.1 Notices**. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to the addresses of each Party set forth below. Notice will be sufficiently given for all purposes as follows:

*Personal Delivery.* When personally delivered to the recipient. Notice is effective on delivery.

*Certified Mail.* When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

*Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

*Facsimile Transmission.* Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful, and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

| | |
|---|---|
| **To IID**: | Imperial Irrigation District<br>Attn.: General Manager |
| *Address for U.S. Mail* | P.O. Box 937<br>Imperial, CA 92251 |
| *Address for Personal or Overnight Delivery:* | 333 E. Barioni Boulevard<br>Imperial, CA 92251 |
| | Telephone: 760-339-9477<br>Facsimile: 760-339-9392 |

With a copy delivered by the same means to:

Horton, Knox, Carter & Foote
895 Broadway
El Centro, CA 92243
Attention: John P. Carter, Esq.

Telephone: 760-352-2821
Facsimile: 760-352-8540

| | |
|---|---|
| **To MWD:** | The Metropolitan Water District of Southern California<br>Attn.: Chief Executive Officer |
| *Address for U.S. Mail* | P.O. Box 54153<br>Los Angeles, CA 90054 |
| *Address for Personal or Overnight Delivery:* | 700 North Alameda Street<br>Los Angeles, CA 90012-2944 |
| | Telephone: 213-217-6000<br>Facsimile: 213-217-6950 |

With a copy delivered by the same means and at the same address to:

The Metropolitan Water District of Southern California
Attn: General Counsel

| | |
|---|---|
| **To CVWD:** | Coachella Valley Water District<br>Attn.: General Manager-Chief Engineer |
| *Address for U.S. Mail* | P.O. Box 1058<br>Coachella, CA 92236 |
| *Address for Personal or Overnight Delivery:* | Highway 111 and Avenue 52<br>Coachella, CA 92236 |
| | Telephone: 760-398-2651<br>Facsimile: 760-398-3711 |

With a copy delivered by the same means to:

Redwine & Sherrill
1950 Market Street
Riverside, CA 92501

Telephone: 909-684-2520
Facsimile: 909-684-9583

**(1)** A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

**(2)** A Party may change its address by giving the other Parties notice of the change in any manner permitted by this Agreement.

**11.2 Waiver**. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of a breach, failure of condition or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

**11.3 Post-Closing Notices**. Each Party will give the other Parties prompt notice from time to time after the Closing Date and prior to the Termination Date of any actions, suits, legal or administrative proceedings, or governmental investigations pending or, to such Party's knowledge, threatened against or affecting any Party relating to the performance contemplated by this Agreement and the Related Agreements.

**11.4 Counterparts**. This Agreement may be executed in three or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

**11.5 No Third-Party Rights**. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

**11.6 Ambiguities**. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

**11.7 Alterations in PPI or GDPIPD Inflation Indices**. If the publication of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) or if the publication of the Gross Domestic Product Implicit Price Deflator is altered in some manner, including changing the name of the index, the geographic area covered, or the base year, the Parties will use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects the change in the level of producer prices for the materials and components for construction, or the change in the level of prices for goods and services included in the calculation of the United States Gross Domestic Product, as applicable.

**11.8 Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the acquisitions of Colorado River water contemplated herein.

**11.9 Binding Effect; No Assignment**. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. No Party may Assign any of its rights or Delegate any of its duties under this Agreement or the Related Agreements, and any such Assignment or Delegation made in violation of this Section 11.9 shall be void and of no force or effect.

**11.10 Joint Defense**. The Parties agree to cooperate, to proceed with reasonable diligence, and to use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Except as otherwise provided in the ECSA, or under an agreement referenced in Section 6.2(15), each Party shall bear its own costs of participation and representation in any such defense.

**11.11 Entire Agreement**. This Agreement (including the exhibits and other agreements attached to and referenced in this agreement) constitutes the final, complete, and exclusive statement of the terms of the Agreement among the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

**11.12 Modification**. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by all Parties.

IN WITNESS WHEREOF, IID, CVWD AND MWD have executed this Agreement as of the day and year first written above.

Approved as to form:

By: _____

Its: Chief Counsel

IMPERIAL IRRIGATION DISTRICT

By: _____

Its: PRESIDENT

By: Gloria A Rivera

Its: Secretary

By: _____

Its: General Counsel

COACHELLA VALLEY WATER DISTRICT

By: _____

Its: General Manager-Chief Engineer

By: _____

Its: GENERAL COUNSEL

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____

RONALD R. GASTELUM
Chief Executive Officer

# QUANTIFICATION SETTLEMENT AGREEMENT
# JOINT POWERS AUTHORITY
# CREATION AND FUNDING AGREEMENT

This Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement ("Agreement") is dated for reference this 10th day of October, 2003 and made by and among the STATE OF CALIFORNIA acting by and through the DEPARTMENT OF FISH AND GAME ("State"), the COACHELLA VALLEY WATER DISTRICT, ("CVWD"), the IMPERIAL IRRIGATION DISTRICT, ("IID") and the SAN DIEGO COUNTY WATER AUTHORITY, ("SDCWA"). The State, CVWD, IID and SDCWA are sometimes referred to herein, individually and collectively as the "Party" or "Parties". This Agreement is the QSA JPA as referenced in the QSA and the Environmental Cost Sharing Agreement.

## RECITALS:

A. The Department of Fish and Game is a state agency formed pursuant to California Fish and Game Code section 700, *et seq.*, and is authorized by the Legislature to enter into this agreement on behalf of the State.

B. The CVWD is a county water district organized under the California County Water District Law.

C. The IID is an irrigation district organized under the California Irrigation District Law.

D. The SDCWA is a county water authority organized under the California County Water Authority Act.

E. Each of the Parties herein is a public agency. Each of the Parties herein is authorized and empowered to contract with the other Parties for the joint exercise of powers under California Joint Exercise of Powers Act and Section 3 of 2003 Stats., ch. 613 (SB 654, Machado) ("SB 654"). A copy of SB 654 is attached to this Agreement as Exhibit A.

F. SB 654 established a mechanism to implement and allocate environmental mitigation cost responsibility among IID, CVWD, SDCWA, and the State for the implementation of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement. Costs for environmental mitigation requirements up to and not to exceed a present value of $133,000,000 shall be borne by IID, CVWD, and SDCWA, with the balance to be borne by the State. Similarly, SB 654 limits the responsibility for payments by IID, CVWD and SDCWA for Salton Sea restoration to a present value of $30,000,000, in addition to any payments under the provisions of subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and subdivision (b) of Section 3 of SB 654.

G. IID, CVWD and SDCWA are entering this Agreement in reliance upon, and this Agreement is intended to implement, the provisions of SB 654 which allocates the costs and authorizes the State to accept responsibility for certain environmental mitigation costs. This

Agreement creates the Quantification Settlement Agreement Joint Powers Authority and establishes the respective obligations and limitations of each of the Parties for funding of the joint powers authority and the costs of environmental mitigation. In addition, this agreement establishes certain obligations and limitations related to the costs of Salton Sea Restoration.

H. On or about October 10, 2003, CVWD, IID, and The Metropolitan Water District of Southern California executed that certain Quantification Settlement Agreement ("QSA") which settles a variety of long-standing Colorado River disputes regarding the priority, use and transfer of Colorado River water, establishes the terms for the further distribution of Colorado River water among those entities for a period of time based upon the water budgets set forth therein and includes as a necessary component thereof the implementation of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement. These conserved water transfers and the QSA are critical components of the State's efforts to comply with the California Limitation Act of 1929, Section 4 of the Boulder Canyon Project Act of 1928 and to implement the California Constitutional mandate of Article X, Section 2. Neither the QSA or these conserved water transfers could be implemented without compliance with extensive state and federal environmental laws, and this Agreement including the State Obligation is the principal mechanism for ensuring that required mitigation under those laws for these transfers will be fully paid for.

I. The terms of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement are subject to the implementation of a mechanism to resolve and allocate environmental mitigation responsibility between those Parties on the terms and conditions set forth in that certain Environmental Cost Sharing, Funding and Habitat Conservation Plan Development Agreement among CVWD, IID, and SDCWA ("ECSA"). A copy of the ECSA is attached to this Agreement as Exhibit B.

J. This Agreement is necessary to (1) allocate among the State, the CVWD, the IID and the SDCWA Environmental Mitigation Costs; (2) make certain and limit the financial liability of the CVWD, the IID and the SDCWA for Environmental Mitigation Costs; (3) make certain and limit the financial liability of the CVWD, the IID and the SDCWA for Salton Sea restoration costs; and (4) allocate the remaining financial and other risks associated with the Environmental Mitigation Requirements and Salton Sea restoration costs to the State.

K. CVWD, IID and SDCWA have agreed to substantial commitments of water, money, and other valuable resources to implement the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement, among which are commitments of funds to mitigate environmental impacts of those agreements and to promote restoration of the Salton Sea. These commitments would not have been made without the promises of the State as documented in this Agreement. In addition, IID, CVWD and SDCWA are relying upon this Agreement in entering into other agreements with third parties, including without limitation, contracts with landowners and farmers in the Imperial Valley who are to produce conserved water.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND THE PROVISIONS, CONDITIONS AND TERMS PROVIDED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS AND PRELIMINARY PROVISIONS

1.1 Definitions.

As used in this Agreement, capitalized terms not defined below shall have the meaning set forth in the ECSA and, if not defined therein, in the QSA.

a. "Canal Lining Project" shall mean the design and construction of lining in portions of the All-American Canal and the Coachella Canal, as authorized by Public Law 100-675, which qualifies for funding pursuant to the California Water Code sections 12560, *et seq.* as amended by Section 1 of 2003 Stats., ch. 613 (SB 654, Machado).

b. "Environmental Mitigation Cost Limitation" shall mean (i) a present value equal to $133,000,000 of the payments by the CVWD, the IID and the SDCWA pursuant to this Agreement. Environmental Mitigation Cost Limitation with respect to the CVWD, the IID or the SDCWA, separately, shall mean the individual obligation for a portion of the amount of $133,000,000 allocated to each agency respectively by Article IX of this Agreement. When used in the context of the Environmental Mitigation Cost Limitation, the words "liable" or "liability" mean any responsibility or obligation arising out of or related to any claim, demand, cause of action, cost, expense, condition or restriction, and shall include, without limitation, damages, fees, fines, penalties, assessments, permit conditions, litigation cost, attorneys' fees, administrative requirements, in-kind contributions, adaptive management requirements, and cost-sharing requirements.

c. "Restore" and "Restoration" shall have the same meaning as such terms are used in the QSA Legislation.

d. "Salton Sea Restoration Limit" shall mean a present value equal to $30,000,000 of the payments made by the CVWD, the IID or the SDCWA to the Salton Sea Restoration Fund. Salton Sea Restoration Limit with respect to the CVWD, the IID or the SDCWA, separately, shall mean the individual obligation for a portion $30,000,000 limit for each agency respectively by Article XIV of this Agreement. When used in the context of the Salton Sea Restoration Limit, the words "liable" or "liability" mean any responsibility or obligation arising out of or related to any claim, demand, cause of action, cost, expense, condition or restriction, and shall include, without limitation, damages, fees, fines, penalties, assessments, permit conditions, litigation cost, attorneys' fees, administrative requirements, in-kind contributions, adaptive management requirements, and cost-sharing requirements. The Salton Sea Restoration Limit is exclusive of Salton Sea restoration funding provided pursuant to the provisions of subdivision (c) of Section 2081.7 and subdivision (f) of Section 1013 of the Water Code.

e. "State" shall mean the State of California.

1.2 Present Value of Amounts.

The amounts stated in subdivisions b and c of Section 1.2 and in Articles IX and XIV are in 2003 dollars and are expressed as present-value totals. The present value of these amounts shall be calculated using a six percent discount factor.

## ARTICLE II

## CREATION OF THE QUANTIFICATION SETTLEMENT AGREEMENT JOINT POWERS AUTHORITY

2.1. Creation of Agency.

There is hereby created a public agency known as the "Quantification Settlement Agreement Joint Powers Authority" (the "Authority"). The Authority is formed by this Agreement pursuant to the provisions of the Joint Exercise of Powers Act, being Article I, Chapter 5, Division 7, Title 1 of the Government Code of the State of California commencing at Section 6500, as supplemented by 2003 Stats., ch. 613 (SB 654 Machado). The Authority is a public agency separate from the Parties.

2.2. Purpose of Authority.

The purpose of this Authority is to pay for Environmental Mitigation Requirements and Environmental Mitigation Costs by and through the collection, holding, investing and disbursing of funds.

## ARTICLE III

## POWERS OF THE AUTHORITY

3.1 General Powers.

The governing body of the Authority shall have the power, in the Authority's own name, and as necessary or convenient to implementation of the Authority's purpose, to do any and all of the following:

(a) To make and enter into contracts, including, without limitation contracts with one or more of the Parties.

(b) To employ agents, employees, attorneys, consultants, advisors, and independent contractors.

(c) To incur debt, liabilities or obligations provided, however, that no debt, liability or obligation shall directly or indirectly result in a liability of the CVWD, the IID or the SDCWA in excess of the Environmental Mitigation Requirement Cost Limitation or the Salton Sea Restoration Limit. The Authority may issue revenue bonds, contracts of indebtedness,

certificates of participation and other finance instruments pursuant to any State statute applicable to any of the Parties. Action under this subdivision requires the affirmative vote of three Commissioners, including the Commissioner representing the State.

(d) To disburse funds to one or more of the Parties to pay for the implementation of the Environmental Mitigation Requirements, in accordance with a budget adopted by the governing body.

(e) To sue and be sued in its own name.

(f) To accumulate reserve funds for the purposes herein.

(g) To apply for, receive and utilize gifts, grants, and loans from any source available.

(h) To acquire, by grant, lease, purchase, bequest, devise, and hold, enjoy, lease or sell, or otherwise dispose of real and personal property.

(i) To invest surplus funds pursuant to Government Code § 6509.2, subject to Government Code §§ 53600 *et seq.* Interest or other earnings on funds contributed for Environmental Mitigation Costs shall be used exclusively for the payment of such costs.

(j) To adopt rules, policies, by-laws, regulations and procedures governing the operation of the Authority consistent with this Agreement.

(k) To take other actions necessary or convenient for the full exercise of the powers granted by this Agreement.

3.2 Limitation on Powers.

The Environmental Mitigation Cost Limitation and the Salton Sea Restoration Limit have been established pursuant to subparagraph (1) of subdivision (b) and subdivision (c) of Section 3 of SB 654. The Authority shall have no power to incur any debt, liability or obligation that would directly or indirectly result in any liability to the CVWD, the IID or the SDCWA in excess of the Environmental Mitigation Cost Limitation or the Salton Sea Restoration Limit. The liability for any Environmental Mitigation Requirements in excess of the Environmental Mitigation Cost Limitation or any funding obligation or in-kind contributions of any kind for restoration of the Salton Sea, including federal cost-sharing or other federal requirements, shall be borne exclusively by the State and sources other than the CVWD, the IID or the SDCWA, except for restoration funding provided pursuant to the requirements of subdivision (c) of Section 2081.7 and subdivision (f) of Section 1013 of the Water Code.

3.3 Limitation of Liability of Parties.

The debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone and not of the Parties or any Party.

3.4 Contracts.

The procedures and requirements applicable to contracts of the SDCWA shall apply to contracts of the Authority, provided, however, that all contracts shall be approved by the Commission.

3.5 Exercise of Powers.

The Authority shall be subject to the same restrictions upon the manner of exercising its powers as the restrictions upon the manner of exercising the powers of the SDCWA, unless otherwise provided herein.

ARTICLE IV

TERM

4.1 Effective Date.

This Agreement shall become effective and the Authority shall be created at the latter of the following events: (a) when the governing bodies of all of the Parties to this Agreement have authorized execution of this Agreement; or (b) January 1, 2004.

4.2 Termination Date.

This Agreement shall terminate on the later of (1) the mutual Termination Date of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement, or (2) when all Environmental Mitigation Requirements have been satisfied and the costs thereof fully paid, unless terminated sooner by written consent of each of the Parties evidenced by a certified copy of a resolution of its respective governing bodies.

4.3 Limitation on Withdrawal.

No Party to this Agreement may withdraw from the Authority without the express written consent or approval of all of the remaining Parties. Any attempted withdrawal by a Party not made in accordance with this Agreement shall be deemed a breach of this Agreement and the breaching Party shall be liable to the non-breaching Parties for the remainder of any sums owed by the Party under the ESCA and this Agreement, the Party's allocation of administrative expenses for the fiscal year in which the breach occurred and for the following fiscal years and for any damages for such breach.

ARTICLE V

GOVERNING BOARD

5.1 The Commission.

The governing body of the Authority shall be known as the "Commission" for the Authority. The Commission shall be composed of four (4) members ("Commissioners"), one from each Party to this Agreement. All of the power and authority of the Authority shall be exercised by the Commission.

5.2 Appointments to the Commission.

The CVWD, the IID and the SDCWA shall each designate and appoint one (1) member of its governing board to act as its Commissioner and one (1) member of its governing body to act as its alternate Commissioner. In lieu of appointing a member of its governing body, the CVWD, the IID or the SDCWA may appoint its general manager or a member of its staff as a Commissioner or alternate Commissioner. The manner of appointment of the Commissioner and alternate Commissioner shall be determined by the appointing agency, subject to the consent of the agency's governing body. The Director of the Department of Fish and Game or his or her designee shall be the Commissioner representing the State. The Director of the Department shall also designate an alternate. During any absence of the Commissioner, the alternative Commissioner shall act in his place. Each Commissioner (and alternate), other than the Commissioner representing the Department shall serve at the pleasure of the governing body of the appointing Party and may be removed at any time, with or without cause, in the sole discretion of the Party's governing body.

5.3 Commissioners to Serve Without Compensation from Authority.

The Commissioners and alternate Commissioners shall serve without compensation from the Authority. Each Party shall be responsible for paying the expenses of the Commissioner and alternate Commissioner of the Party incurred in connection with Authority business according to the law and policies applicable to the Party.

5.4 Resignation of Commissioners.

Any Commissioner or alternate Commissioner may resign at any time by giving notice to the Chairperson of the Authority and the presiding officer of the Party. Any such resignation shall be effective upon receipt of such notice or at any later time specified in the notice.

5.5 Vote by Commissioners.

Unless otherwise disqualified pursuant to California law because of a personal financial or other conflict of interest, a Commissioner, or an alternate Commissioner when acting in the absence of the Commissioner, may vote on all matters of Authority business, including, without limitation, contracts between the Authority and the appointing Party.

5.6 Local Conflict of Interest Code.

The Commission shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act.

## ARTICLE VI

## CONDUCT OF MEETINGS

6.1 Meetings.

The Commission of the Authority shall establish a regular meeting schedule. At its first meeting, the Commission shall provide for the time and place of holding its regular meetings. Special meetings may be called at the request of the Chairperson or of a majority of the Commissioners. Notice of and the agenda for all meetings shall be furnished in writing to each Commissioner (and alternate) and to each Party to this Agreement. The meetings of the Commission shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act as set forth in the California Government Code. The Commission may adopt supplemental rules of procedure for the conduct of meetings.

6.2 Minutes.

The Secretary of the Authority shall cause to be kept the minutes of all Commission meetings, and shall cause a copy of these minutes, along with copies of all ordinances and resolutions enacted, to be forwarded to each of the Parties hereto.

6.3 Quorum.

Three members of the Commission shall constitute a quorum for the transaction of business. In the absence of a Commissioner, the alternate Commissioner, if present, shall be counted for purposes of determining a quorum.

6.4 Actions.

Unless otherwise provided herein, all actions of the Commission shall be passed upon the affirmative vote of three Commissioners. Actions may be taken by resolution or motion recorded in the minutes.

ARTICLE VII

OFFICERS

7.1 Chairperson.

The Commissioner representing the State shall act as Chairperson of the Commission. The Chairperson is the presiding officer of the Commission. The Chairperson and shall be recognized as the head of the Authority for all ceremonial and public purposes, and for the signing of legal instruments and documents of the Authority. At meetings of the Commission, the Chairperson shall not be deprived of any of the rights and privileges of a Commissioner by reason of being presiding officer. The alternate Commissioner representing the State shall serve as Chairperson in the absence of the State's Commissioner.

7.2 Vice-chairperson.

The Commission may select one of its members to serve as Vice-chairperson. The Vice-chairperson is the presiding officer of the Commission in the absence of the Chairperson. The Vice-chairperson shall perform the duties of the Chairperson whenever the Chairperson is absent, temporarily incapacitated from performing the duties of the Chairperson, or as may be delegated by the Chairperson. The Vice-chairperson shall serve at the pleasure of the Commission.

7.3 Additional Officers.

The Commission may appoint such additional officers to perform such duties and shall have such powers as the Commission may, from time to time, determine.

7.4 Service of Vice-chairperson or Additional Officers.

Subject to the provisions set forth herein, the officers shall be appointed annually in January. Officers shall assume the duties of their offices immediately after their appointment and shall hold office until their successors are appointed, except in the case of their earlier removal or resignation. Vacancies shall be filled by appointment of the Commissioners and such appointee shall hold office until the appointment of his or her successor.

ARTICLE VIII

MANAGEMENT

8.1 Chief Administrative Officer.

The General Manager of the SDCWA or an employee of the SDCWA designated by the General Manager of the SDCWA shall serve as the Chief Administrative Officer of the Authority. Such service shall be without compensation by the Authority. The Chief Administrative Officer is responsible for the efficient administration of the affairs of the Authority. The Chief Administrative Officer shall serve as secretary to the Commission and

shall keep the minutes and records of the Authority. The records of the Authority are subject to the California Public Records Act. The SDCWA shall not receive economic remuneration from the Authority or the other Parties for provision of administrative management services under this paragraph.

8.2 Treasurer.

The Treasurer of the SDCWA shall serve as the treasurer of the Authority. The treasurer shall be the depository and have custody of all of the money of the Authority from whatever source. The duties of the treasurer shall be performed in accordance with Government Code § 6505.5 without compensation or charge to the Authority, provided, however, that the treasurer may contract with a certified public accountant, public accountant or other qualified independent auditor to make an annual audit of the accounts and records of the Authority as provided in Government Code § 6505 and may charge the costs thereof to the Authority as a reimbursable expense. The treasurer may contract with qualified investment, financial and other advisors and may charge the costs thereof to the Authority as a reimbursable expense. Except as otherwise provided herein, the SDCWA shall not receive economic remuneration from the Authority or the other Parties for provision of treasurer services under this paragraph. The Treasurer may invest funds of the Authority according to an investment policy of the Commission adopted pursuant to Government Code §§ 53600 *et seq*. Until such an investment policy is adopted, the investment policy of the SDCWA shall apply to investment of Authority funds.

8.3 Legal Counsel.

The chief legal counsel of CVWD shall serve as legal counsel to the Authority. In the event of an ethical conflict of interest arising from a direct dispute between the Authority and any of the Parties, the Authority shall retain independent legal counsel the cost of which shall be borne by the Parties. The CVWD shall not receive economic remuneration from the Authority or the other Parties for provision of legal services under this paragraph. Litigation services, if needed, are to be provided subject to a contract with qualified counsel after approval by the Commission, and shall be paid pursuant to Section 10.4.

8.4 Agent for Service of Process.

The Chief Administrative Officer of the Authority is the Authority's agent for service of process.

8.5 Authority's Business Offices.

Authority's business office shall be located at the principal place of business of the SDCWA, which on the date of this agreement is 4677 Overland Ave., San Diego, CA 92123. SDCWA shall make its personnel available, during the term of this Agreement as necessary to perform the secretarial, clerical, accounting and administrative duties of the Authority without remuneration, cost or expense of any kind to the Authority or the other Parties, except as otherwise provided in Article X.

8.6 Roster of Public Agencies.

The Chief Administrative Officer shall register the Authority in the roster of public agencies pursuant to Government Code § 53051.

## ARTICLE IX

## CONTRIBUTIONS FOR ENVIRONMENTAL MITIGATION REQUIREMENTS

9.1 Environmental Mitigation Contributions.

The CVWD, the IID and the SDCWA shall make contributions to the Authority having a present value of the following amounts:

| | |
|---|---|
| CVWD | $36,717,791 |
| IID | $30,000,000 |
| SDCWA | $52,220,859 |

The IID shall also make an additional contribution pursuant its obligation under Section 4.1(2) of the ECSA having a present value of $14,061,350. Payments shall be made according to the schedules attached as Exhibits C-1, C-2 and C-3, unless paid in advance.

9.2 State Obligation.

The State is solely responsible for the payment of the costs of and liability for Environmental Mitigation Requirements in excess of the Environmental Mitigation Cost Limitation. The amount of such costs and liabilities shall be determined by the affirmative vote of three Commissioners, including the Commissioner representing the State, which determination shall be reasonably made. The State obligation is an unconditional contractual obligation of the State of California, and such obligation is not conditioned upon an appropriation by the Legislature, nor shall the event of non-appropriation be a defense.

9.3 Remaining Environmental Mitigation Costs.

The State shall have the rights under Section 4.2(2) of the ECSA to reduce its possible obligation to pay Remaining Environmental Mitigation Costs.

9.4 Environmental Mitigation Costs Following Termination of 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement.

The Authority shall have the rights and obligation under Section 4.3(3) and (4) of the ECSA.

9.5 Adjustment of Payment Schedules.

The CVWD, the IID or the SDCWA may adjust its respective payment schedule identified in Exhibit C-1, C-2 or C-3 so long as the adjustment does not affect the Authority's ability to pay Environmental Mitigation Costs subject to Environmental Mitigation Cost Limitation. If the Authority issues debt, the Party or Parties whose schedule of payments provides the revenue to repay the debt shall (i) reimburse the Authority for the amount, if any, debt service payments exceed the amount required if the Authority borrowed money at an annual interest rate of 6% compounded annually, and (ii) shall receive a credit against its schedule of payments for the amount, if any, debt service payments are less than they would be if the Authority had borrowed money at an annual rate of 6% compounded annually. Payments actually made by a Party toward Environmental Mitigation Costs after October 10, 2003 and before the Effective Date of this Agreement shall be credited to that Party's payment obligation under this Agreement. Additionally, SDCWA shall receive a credit toward its payment obligations under this Agreement, not to exceed a present value of $3,118,000, for payments made to the Bureau of Reclamation for satisfaction of Environmental Mitigation Requirements pursuant to that agreement among the Bureau of Reclamation, MWD, and SDCWA, dated October 10, 2003, regarding responsibility for implementation of Conservation and Mitigation Measures for the Colorado River described in a U.S. Fish and Wildlife Service Biological Opinion dated January 12, 2001.

## ARTICLE X

## BUDGET, CONTRIBUTION FOR THE COST AND EXPENSES OF THE AUTHORITY AND PAYMENTS BY THE AUTHORITY

10.1 Annual Budget.

As soon as possible after the formation of the Authority and annually thereafter, the Commission shall adopt a budget for the payment of Environmental Mitigation Costs. The budget shall be prepared in sufficient detail to constitute an operating outline for contributions to be made by the Parties and expenditures to be made during the ensuing year to pay for the Environmental Mitigation Costs. The budget shall include payments to IID for Salton Sea mitigation water consistent with Exhibit D. The affirmative vote of three Commissioners, including the Commissioner representing the State, is required for action under this section, and the approval of each shall not be unreasonably withheld after giving meaningful consideration to the need for timely implementation of any Environmental Mitigation Requirement and the appropriate procurement or maintenance of any permit, approval, authorization, or other requirement, of any Environmental Mitigation Requirement.

10.2 Financing Plan.

The Commission may adopt a long-term financing plan to assure that sufficient funds are available to meet the reasonably expected annual costs of paying for the Environmental Mitigation Requirements. In the event that the Authority is required to issue debt, in any form, the Party or Parties whose schedule of payments provides the revenue to repay the debt shall incur the costs of issuance and the adjustments as provided for in Section 9.3. The affirmative

vote of three Commissioners, including the Commissioner representing the State, is required for action under this section.

10.3 Reimbursement to Parties of Direct Costs Incurred for Environmental Mitigation.

A Party that incurs Direct costs for Environmental Mitigation Costs under the approved budget will be reimbursed by the Authority. Reimbursement shall be made only upon submission of a cost report signed by the treasurer or controller of the Party and determination of the Authority that the report substantially conforms to the requirements of this Section. The cost report shall be in a form and contain the information specified by the Commission. The cost report shall be based upon proper accounting records maintained by the Party. The accounting records shall be open to inspection by the Authority or any other Party. The Authority's determination regarding a cost report shall be made within thirty days of submission. Reimbursement shall be made by the Authority within thirty days following determination of the Authority that the report conforms with the requirements of this section. If the Authority determines that a report does not comply with the requirements of this section, the Party submitting the report may submit a revised report, which shall then be considered in the same manner as an initial report. If any portion of an approved reimbursement is not timely paid, the delinquent amount will bear interest at the rate earned by the Authority on its investments, but not to exceed twelve percent interest per annum compounded monthly. Direct costs shall mean Costs, other than out-of-pocket costs, as defined in the ESCA, but shall not include a Party's administrative costs, overhead costs, staff costs, losses of revenue from any source, other opportunity costs of any kind and other similar indirect costs as determined by the Commission not inconsistent with the ESCA.

10.4 Environmental Litigation Costs.

Environmental Litigation Costs shall be paid as set forth in Section 3.2 of the ECSA.

## ARTICLE XI

## CONTRIBUTION PROCEDURE FOR AMOUNTS EXTRAORDINARY ADMINISTRATIVE AND OTHER REIMBURSABLE EXPENSES

11.1 Extraordinary Administrative and Other Reimbursable Expenses.

The Commission may, upon request by the SDCWA reimburse the SDCWA for extraordinary administrative costs and other reimbursable expenses incurred on behalf of and at the specific request of the Authority. The Commission shall pay for legal, accounting, and other special professional services employed by the Authority and not otherwise provided by a Party. Upon authorization of such expenses by the Commission, each Party shall provide for equal contributions toward the total amount of the approved expenditure. Contributions for extraordinary administrative costs shall be in addition to the contributions for the payment of Environmental Mitigation Requirements and shall not count towards the Environmental Mitigation Cost Limitation.

11.2 Time of Payment.

The contribution of each Party for allowed costs under Section 11.1 shall be billed quarterly and due and payable thirty (30) days after receipt of a billing therefor from the Authority. Unpaid contributions shall bear interest at the legal rate of interest from the date due to the date paid.

## ARTICLE X11

## ACCOUNTING

12.1 Fiscal Year.

The fiscal year of the Authority shall be from July 1 of a year to June 30 of the following year.

12.2 Books and Accounts.

Full books and accounts shall be maintained by the treasurer in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies. Subject to the provisions of paragraph 8.2, the treasurer of the Authority shall comply strictly with the requirements of the statutes governing joint power agencies, Chapter 5, Division 7, Title 1 of the Government Code, commencing with Section 6500.

12.3 Filing Annual Audit.

The annual audit of the accounts of the Authority shall be filed with each Party no later than fifteen (15) days after receipt of the audit by the Commission.

## ARTICLE XIII

## DISSOLUTION OR TERMINATION

13.1 Distribution of Residual.

Dissolution or termination shall not relieve any Party of its obligation to pay for Environmental Mitigation Requirements under this Agreement. Upon dissolution or termination of the Authority any residual funds remaining after payment in full of all Environmental Mitigation Requirements shall be distributed to the Salton Sea Restoration Fund, and any remaining funds due from a Party shall be paid by that party directly to the Salton Sea Restoration Fund.

13.2 Manner of Distribution.

The distribution of assets may be made in kind or assets may be sold and the proceeds thereof distributed to a Party at the time of withdrawal or to the Parties at the time of dissolution.

## ARTICLE XIV

## FUNDING LIMITATION

14.1 Funding Limitation for Environmental Mitigation Requirements.

The liability of the CVWD, the IID and the SDCWA for Environmental Mitigation Requirements or Environmental Mitigation Costs shall not exceed the Environmental Mitigation Cost Limitation. The State shall defend, indemnify and hold harmless the CVWD, the IID and the SDCWA, individually or collectively as the case may be, with respect to any Environmental Mitigation Requirement or Environmental Mitigation Cost which exceeds the Environmental Mitigation Cost Limitation.

14.2 Cooperation Regarding State Obligation.

If the Authority anticipates that the Environmental Mitigation Cost Limitation will be exceeded within two years, then the Authority shall submit a written notice to the State stating the reasons for that anticipation, as well as estimates of the projected cost of remaining Environmental Mitigation Requirements. The State will seek, with the support of the other Parties, to obtain Legislative appropriation of funds sufficient to satisfy the State obligation, if any, for costs of the Environmental Mitigation Requirements as soon as it appears that the expenditures of the Authority are within $5,000,000 of the Environmental Mitigation Requirement Cost Limitation, so long as the Authority has encumbered the total amount owed pursuant to Article IX by the CVWD, the IID and the SDCWA.

14.3 Funding Limitation for Salton Sea Restoration Costs.

In accordance with this Agreement and as required by the State agency responsible for administration of the Salton Sea Restoration Fund, the CVWD, the IID and the SDCWA shall make contributions to the Salton Sea Restoration Fund having a present value of the following amounts:

| | |
|---|---|
| CVWD | $ 8,282,209 |
| IID | $ 9,938,650 |
| SDCWA | $11,779,141 |

IID's payments to the Salton Sea Restoration Fund shall not exceed in any year the amounts set forth on Exhibit E., unless IID consents.

The liability of the CVWD, the IID and the SDCWA for Salton Sea restoration costs shall not exceed the Salton Sea Restoration Limit. The State shall defend, indemnify and hold harmless the CVWD, the IID and the SDCWA, individually or collectively as the case may be,

with respect to any liability, requirement, expense, cost or obligation for restoration of the Salton Sea the cost of which exceeds the Salton Sea Restoration Limit.

## ARTICLE XV

## GENERAL PROVISIONS

15.1 Governing Law.

This Agreement is entered into in the Counties of Riverside, Imperial and San Diego, California and shall be governed by and construed in accordance with the laws of the State of California.

15.2 Severability and Waiver.

In the event that any term or condition of this Agreement is determined to be invalid, illegal or otherwise unenforceable, this Agreement shall be terminated unless the Parties otherwise consent to continuation of the Agreement without the severed provision. If the CVWD, the IID, or the SDCWA have made payments or incurred unreimbursed Direct costs for the Environmental Mitigation Requirements or for the Salton Sea Restoration Fund as provided in this Agreement, then the obligations of the State under Sections 9.2, 14.1 or 14.3 shall remain in full force and effect as to the party making such contribution notwithstanding the severance of any provision, or termination of this Agreement pursuant to this Section. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

15.3 Binding Effect.

This Agreement shall be binding on the Parties and their respective successors and assigns, provided that assignment of this Agreement shall require consent of the other Parties.

15.4 Authority to Execute.

Any person signing this Agreement represents that he/she has full power and authority to do so, and, that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

15.5 Integrated Agreement.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

15.6 Time of the Essence.

Time is of the essence of this Agreement.

15.7 Notices.

Any communication, notice or demand of any kind whatsoever which any Party may be required or may desire to give to or serve upon the other Party shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

State of California
c/o Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

CVWD:
Coachella Valley Water District
Attention: General Manager/Chief Engineer
P. O. Box 1058
Coachella, CA 92236

for personal or overnight delivery:

Coachella Valley Water District
Attention: General Manager/Chief Engineer
Avenue 52 and Highway 111
Coachella, CA 92236

Telephone: 760-398-2651
Facsimile: 760-398-3711

Copy to:
Gerald D. Shoaf, Esq.
Steven B. Abbott, Esq.
Redwine and Sherrill
1950 Market Street
Riverside, CA 92501-1720
Telephone: 909-684-2520
Facsimile: 909-684-9583

IID: Imperial Irrigation District
Attn: General Manager
P.O. Box 937
Imperial, CA 92251
Telephone: 760-339-9477
Facsimile: 760-3339-9392

for personal or overnight delivery:

Imperial Irrigation District
Attn: General Manager
333 E. Barioni Boulevard
Imperial, CA 92251

Copy to: John P. Carter
Horton, Knox, Carter & Foote
895 Broadway
El Centro, CA 92243
Telephone: 760-482-9651
Facsimile: 760-370-0900

SDCWA: San Diego County Water Authority
Attn: General Manager
4677 Overland Ave.
San Diego, CA 92123
Telephone: 858-522-6780
Facsimile: 858-522-6562

Copy to: San Diego County Water Authority
Attn: General Counsel
4677 Overland Ave.
San Diego, CA 92123
Telephone: 858-522-6790
Facsimile: 858-522-6562

Any Party may change its address for notice by written notice given to the other Parties in the manner provided in this subsection 15.7. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service; one (1) day after the date of confirmed dispatch, if by electronic communication, or three (3) days after being placed in the U.S. mail, if mailed.

15.8 Further Acts.

Each Party agrees to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

15.9 Interpretation.

The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

15.10 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

15.11 Third Party Beneficiaries

This Agreement, other than with respect to Section 9.2, is made solely for the benefit of the Parties hereto and their respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

15.12 Additional Parties.

Additional parties may join this agreement only upon the amendment of this agreement consented to by all the existing Parties.

15.13 Remedies.

Each Party shall have all remedies available at law or in equity to enforce the terms of this Agreement. The State shall have the power to sue and be sued in any court of competent jurisdiction.

15.14 Joint Defense.

The Parties and the Authority will cooperate, proceed with reasonable diligence, and use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the validity or enforceability of any terms of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Each Party will bear its own costs of participating and representation in any such defense.

15.15 No Waiver of Sovereign Immunity.

Notwithstanding any other provision of this Agreement, nothing herein is intended to constitute consent by the State of California or any of its departments, agencies, commissions, or boards to suit in any court described in Article III of the U.S. Constitution. This Agreement shall not waive, or be interpreted as waiving, the State of California's sovereign immunity under the

Eleventh Amendment or any other provision of the U.S. Constitution in any present or future judicial or administrative proceeding.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and year hereinafter indicated.

STATE OF CALIFORNIA, acting by and through the Department of Fish and Game

By Robert C. Wright

Title _____

Attest:

By _____

Approved as to Form and Content:

By _____

COACHELLA VALLEY WATER DISTRICT, a California county water district

By _____

Steven Robbins

Its General Manager/Chief Engineer

Approved as to Form and Content:

REDWINE AND SHERRILL

By _____

IMPERIAL IRRIGATION DISTRICT, a California irrigation district

By _____

Its PRESIDENT

By Gloria A Rivera

Its Secretary

Approved as to Form and Content:

By _____

SAN DIEGO COUNTY WATER AUTHORITY

By _____
Its General Manager

By _____
Its _____

Approved as to ~~Form and Content~~:

By _____