



September 1, 2017

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RE: Salton Sea

Dear State Water Resources Control Board:

On behalf of Audubon California, Defenders of Wildlife, Environmental Defense Fund, Pacific Institute, and Sierra Club California, we write to offer our comments in anticipation of the State Water Resources Control Board's (Board's) September 7 Public Workshop regarding the Salton Sea Management Program (SSMP) and the Draft Stipulated Order for Future Action by the State Water Board (Order). As discussed in the following, the draft Order offers several improvements over the status quo: 1) it requires that at least 50% of the project acreage milestones "provide habitat benefits for fish and wildlife that depend on the Salton Sea ecosystem;" 2) it commits the Board to annual monitoring and assessment workshops, facilitating accountability for the SSMP; and 3) it memorializes the acreage milestones in the draft SSMP Phase I: 10-Year Plan, offering an independent basis for assessment. While the draft order provides some improvements, we offer the attached amendments to strengthen and clarify the state's commitments.

Further, even with an improved draft order, our organizations are concerned that more promises and more plans do not equal real projects on the ground to address the imminent and significant human health and environmental threat posed by the water transfer when the mitigation water ends in December 2017. There are still no state habitat or dust control projects in the ground, likely due to insufficient staff resources dedicated by the state. And, there is less than \$100 million available in state funding for projects at the Sea when there is a need for more than several hundred million dollars to complete the minimum amount of promised projects and infrastructure to deliver water to those projects. This lack of progress

and sufficient funding suggests that aggressive oversight by the Board and the legislature will be required, if the milestones in the draft Order are to be achieved and public and ecological health are to be protected.

Draft Stipulated Order

The draft order memorializes the acreage milestones in the March draft of the SSMP Phase I: 10-Year Plan and – importantly – establishes a minimum habitat percentage: “24. No less than 50% of the acreage described in paragraph 23 shall provide habitat benefits for fish and wildlife that depend on the Salton Sea ecosystem.” This is a significant improvement over the 10-Year Plan itself, which offered no specific habitat targets at all. It is important to note that habitat projects also provide air quality benefits, truly creating ‘multi-benefit solutions’. However, because the draft Order does not define “habitat benefits,” or require purpose-built habitat, incidental or unintended habitat benefits, as well as temporary or ephemeral benefits that might occur with vegetated dust control methods, could be counted toward the 50% minimum under the current language, which would counter the intent of this requirement and Order. We have provided language to address this discrepancy.

Furthermore, the 50% minimum only refers to the restoration milestone acreage in paragraph 23. As noted in Table 2 of the 10-Year Plan, the 29,800 acres of proposed projects is only 62% of the 48,300 acres projected to be exposed from 2018-2028.¹ The SSMP presentation² at the public workshops in June and July indicates that “waterless dust control” projects may be constructed (“as needed”) on the remaining 18,500 exposed acres. The 50% habitat milestone presumably does not apply to projects constructed on these additional exposed acres.

Additionally, the draft order needs additional clarification regarding the phases beyond Phase 1, an adjustment in the deadlines for completion of acreage targets to line up with the required reports to the board, and a shorter period of time for any allowable shortfall to ensure that the acreage targets do not fall behind by more than two years within this 10 year period.

Recommended Amendments to the Draft Stipulated Order

Attached is a redline version of the draft board order with our suggested revisions. Those revisions are described below.

To clarify “habitat benefits,” add the following sentence to the end of paragraph 24 of the draft Order: “Projects that provide habitat benefits for fish and wildlife do not include dust control projects that involve surface roughening, vegetation enhancement, and surface stabilization.”

To clarify that the existing paragraph 23 only refers to Phase I, we recommend that the paragraph be amended to read:

23. Consistent with Recitals B, C, and D [of this Order], in addition to currently planned and funded habitat projects (Red Hill Bay, Torres Martinez wetlands and Species Conservation Habitat) and all QSA JPA funded Salton Sea mitigation projects, restoration milestones detailed below are necessary to address public

¹ The SSMP has yet to release its Salton Sea hydrologic model, or the basis for the projected exposure.

² At <http://resources.ca.gov/wp-content/uploads/2015/10/Workshop-Presentation-June-July-2017.pdf>

health and environmental concerns *during Phase 1 of the SSMP. Additional projects and milestones will be developed for subsequent phases to address public health and environmental concerns.*

To be consistent with the annual milestones shown in the March draft of the Phase I: 10-Year Plan, we recommend that the January 1 dates for each of the milestones in Paragraph 23 be changed to December 31 of the prior year. For example, January 1, 2019 should be changed to December 31, 2018.

To clarify that December 31, 2022 is a firm deadline for the SSMP long-term plan, we recommend that the final clause in paragraph 25 be changed to read “CNRA will ~~develop~~ *complete* a long-term plan by no later than December 31, 2022.”

The reporting requirements described in paragraph 27 will encourage transparency and accountability. To promote timely accountability, we recommend that the “cure” for missed milestones be changed, to the following: “Should an annual milestone shortfall exceed 20 percent of a year’s annual obligation ~~for more than two years~~, the report will also include a plan that will cure the deficiency within 12 months.” While we would prefer a stronger sanction to encourage the Administration to work assiduously to achieve the project milestones, we recognize the Board’s limited authority. Any suggestion of sanctions stronger than plans to cure deficiencies would be welcomed warmly.

Salton Sea Management Program

While the draft stipulated order offers some improvement over the status quo, the continued lack of state projects on the ground concerns us greatly. We encourage the members of the Board to review the comment letters submitted by Audubon California, Defenders of Wildlife, Pacific Institute and Sierra Club California over the past two and a half years (attached for your convenience); most of the observations and recommendations made in previous letters remain acutely relevant. Indeed, with less than four months until the obligation to deliver mitigation water to the Salton Sea expires, the continued absence of on-the-ground state habitat and dust control projects suggests that the SSMP will not achieve the project acreage milestones listed in the draft Order.

Two key factors will determine the success of the SSMP: 1) adequate funding; and 2) adequate project implementation and management. The draft order acknowledges the funding challenge with:

20. The Board further finds and declares that successful management of a smaller but sustainable Salton Sea will require the active participation and support of the federal government, affected local and regional governing bodies, affected tribal governments, environmental and philanthropic organizations, and the State of California. While the importance, cost and scale of this endeavor will exceed what can be expected from any single entity, the State has acknowledged that its role as a catalyst is essential in advancing the cause of restoration.

This is an important point in the draft order, but we note that the identification of specific sources or ideas to finance the SSMP is sorely lacking. Without adequate funding, the SSMP will fail, jeopardizing the health of the more than 650,000 people that live in the Coachella and Imperial valleys – and the health of another

million people across the border in Mexicali,³ as well as the fish and wildlife dependent on the Salton Sea ecosystem. We encourage the Administration to work with the Legislature and stakeholders to obtain such funding. In particular, we are following the current negotiations on a potential water and parks bond in the State Legislature. Our organizations have been vigorously advocating for the inclusion of at least \$300 million in any final bond passed by the Legislature and signed by the Governor. If a bond deal is passed and there is not substantial new funding for the Sea, we believe that is a strong indication of a lack of commitment by the State to follow through with any promises made in the draft order. While we recognize that the Board lacks the authority and jurisdiction to order the Administration to pursue funding, it is critical that the Board acknowledge the importance of funding for the success of the SSMP and take the Administration's pursuit of funding – or failure to do so – into account.

To its credit, the Administration budgeted, and the Legislature appropriated, \$80.5 million for Salton Sea activities for the fiscal years 2016/17 through 2018/19. It is important to remember that only \$60 million of this funding will be available for capital projects; the remainder has been set aside for agency salaries, consultants, and overhead. These funds built upon existing funding, including some \$45.4 million from Prop. 84. Approximately \$30 million of the Prop. 84 has been encumbered for the Species Conservation Habitat project. The Board should request that the Natural Resources Agency provide a clear and complete accounting of all outstanding bond funds that have been allocated for the Salton Sea by the end of this calendar year, and should post this accounting report on the Board's website.

Project implementation is also critical. Despite holding more than \$110 million in Salton Sea accounts, the Administration has yet to initiate construction on any projects at all. The Secretary of the Natural Resources Agency approved the Species Conservation Habitat project more than nine years ago. That project has yet to start construction. In August, DFW conducted the first fish surveys since October, 2008. Neither the SSMP nor its consultant has released a hydrologic model for the Salton Sea. Recent presentations to SSMP committees and to the public fail to reference the changing conditions at the Salton Sea, either in terms of its elevation, salinity, bird counts, or air quality.

The Governor's Salton Sea Task Force Agency Actions, released in October, 2015 – almost two years ago – stated that **“The Natural Resources Agency will take the following actions over an accelerated timeline: Meet a short-term goal of 9,000-12,000 acres of habitat creation and dust suppression projects at the sea.”** The Phase I: 10-Year Plan milestones would not achieve the minimum short-term goal until 2023. Over the eight years between the release of the Agency Actions and the projected construction, more than 30,000 acre of playa will have been exposed. Attachment 2 shows a detailed assessment of the Administration's satisfaction of the goals and directives laid out in the Agency Actions. It is not encouraging.

As of the date of this letter, we have not seen a revised version of the March draft of the Phase I: 10-Year Plan. Attached for your reference please find a copy of our comments on the March 16 draft. The delay in

³ It also increases California's health care liabilities because a large percentage of qualifying U.S./California residents live in Mexico and commute on a daily basis to work and seek healthcare in California. Because of the high poverty level and low income jobs it has become more affordable to the agricultural sector labor force to live in Mexico. If the farm labor population's health is impaired, crops will not be harvested and the local economy will be adversely affected.

releasing a final plan, indicate the insufficient staff resources dedicated to the SSMP, as well as the SSMP's low priority among the Administration's other challenges.

Finally, while we appreciate the various plans and commitments made by the State, we also believe that there have been insufficient staff resources allocated to the getting projects done at the Sea. We know that the current state staff working on the Salton Sea program are working diligently, but they are only a handful of people – and some are only working on this issue part time. The state must ramp up its staffing and oversight of the Salton Sea work, and in particular, give the Assistant Secretary the direct staff resources necessary to accomplish the goal of building thousands of acres of projects at the Sea in the next 10 years while also working through a longer-term plan for managing the Sea.

Most of the recommendations in our previous comment letters remain relevant.

While the draft stipulated order offers a mild improvement over the status quo, the pace of project implementation must accelerate dramatically if the Administration is to avoid a major human health and environmental crisis.

Thank you for your consideration of these comments.

Sincerely,



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Attachments

1. revisions to Aug. 11 draft stipulated order
2. previous comment letters
3. annotated Agency Actions
4. Salton Sea project timeline