(3/18/15) Public Workshop
Salton Sea
Deadline: 3/11/15 by 12:00 noon

Brownstein Hyatt Farber Schreck

LATE COMMENT

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3-12-15
SWRCB Clerk

March 12, 2015

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VIA EMAIL

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

RE: Statement of SDCWA for March 18, 2015 Workshop Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013

Dear Ms. Townsend:

Brownstein Hyatt Farber Schreck, LLP serves as special counsel for the San Diego County Water Authority in regard to issues related to Colorado River water rights and the above referenced matter. On behalf of the Authority, and pursuant to the Notice of Public Workshop: Solicitation of Comments Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013, the attached Statement of SDCWA for March 18, 2015 Workshop Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013 is submitted for consideration by the State Water Board at the workshop scheduled for March 18, 2015.

At the workshop, Dan Denham, the Authority's Colorado River Program Director, will present a summary of the Authority's comments. Mr. Denham's PowerPoint presentation will be transmitted under separate cover.

Please contact me at the phone number shown above if there are any questions about this submittal.

Sincerely,

Bradley J. Herrema

Encl.: Statement of SDCWA

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Statement of SDCWA for March 18, 2015 Workshop Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013

The San Diego County Water Authority (SDCWA) respectfully submits these written comments to the State Water Resources Control Board ("State Water Board") for consideration at its March 18, 2015, Workshop Regarding the Status of the Salton Sea and Revised Water Rights Order 2002-0013. This workshop arises from a Petition filed by the Imperial Irrigation District (IID) requesting the State Water Board to expand its continuing jurisdiction under its Order approving Colorado River water transfers so as to encompass Salton Sea restoration. (Revised Order WRO 2002-0013.) In 2002, the California Legislature adopted SB 482 and firmly established the State's obligation to adopt a feasible restoration plan for the Salton Sea. Its origin is separate and independent from the State Water Board's Revised Order WRO 2002-0013. The State of California never appeared in the proceedings before the State Water Board, and offered no testimony or promises of any kind pertinent to Salton Sea restoration. Moreover, it was more than a year later, in 2003, that the Quantification Settlement Agreement and related agreements (collectively the "QSA Agreements") were executed, paving the way for the historic Colorado River conservation efforts and resulting water transfers.

SDCWA has continuously and unfailingly supported the restoration of the Salton Sea. This position remains unchanged. However, as the public agency that has been the principal source of funding for substantial conservation efforts over the past 15 years in reliance upon the Revised Order WRO 2002-0013, SDCWA is opposed to use of the State Water Board's continuing jurisdiction to address Salton Sea restoration.

The QSA water transfers[1] were approved by the State Water Board and they have been faithfully implemented by the parties pursuant to the QSA Agreements, without limitation, since 2003. Although it has been contended that the air quality near the Salton Sea has continued to worsen and that this is attributable to implementation of the QSA, the allegation is counter-factual and is belied by the prior written reports prepared at the direction of IID and filed with the State Water Board. To the contrary, the QSA transfer parties have fully mitigated the impacts of the QSA water transfers, including effects on the Salton Sea.

It is true that there are feasible restoration projects that would address the air quality concerns raised by IID. However, this is an issue that is beyond the responsibilities of the parties to the QSA. Instead, the State should be obliged to fulfill its commitments to implement identified projects that further the Legislature's species preservation intent, and the goals for Salton Sea restoration could be substantially addressed. While the State had considerable discretion to define "restoration" in the first instance and to adopt a financing plan suitable for the plan, by all accounts, as of March 11, 2015 the State has utterly failed to discharge its duties.

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[1] The term "QSA water transfers" refers to those approved by the State Water Board in Revised Order WRO 2002-0013, which authorized both the 200,000 AFY water transfer from IID to SDCWA and the 100,000 AFY water acquisitions from IID to CVWD or MWD, as described below in the section titled, IID-SDCWA Transfer Water Agreement and History of State Water Board Order.

Rather than accept IID's invitation to expand State Water Board jurisdiction and re-open Revised Order WRO 2002-0013 in even a limited way, SDCWA prefers that the matter be referred to the Governor's Office. There, a stakeholder task force could be formed that may seek participation from the State Water Board, among other parties.

The QSA Agreements

The history of the QSA Agreements is largely uncontested. The 35 QSA Agreements approved in October 2003 settled various disputes over Colorado River water supply. The QSA itself finally quantified the rights to Colorado River water of the IID, Coachella Valley Water District (CVWD), and Metropolitan Water District of Southern California (MWD), which aided California in reducing its Colorado River use from its historical maximum of over 5.2 million acre-feet per year (MAFY) to its basic annual apportionment of 4.4 MAFY in normal years. Different aspects of the QSA Agreements contributed to this reduction by implementing water conservation programs in IID's service area, transferring conserved water to CVWD, MWD, SDCWA, and others, including the San Luis Rey Settlement Parties. This settlement also included substantial commitments of funds by CVWD, IID and SDCWA to mitigate environmental impacts of the QSA Agreements and related water transfers.

At full implementation, beginning in 2021, SDCWA will receive 280,000 acre-feet per year (AFY) of water pursuant to the QSA Agreements. This includes 200,000 AFY of conserved water from the IID transfer for up to 75 years and 80,000 AFY of conserved water from the All American Canal and Coachella Canal lining projects[2] for 110 years.

IID-SDCWA Transfer Water Agreement and History of State Water Board Order

In response to unprecedented cut-backs to SDCWA's water supply from MWD during California's major drought in the early 1990s, SDCWA developed plans to reduce its nearly exclusive reliance on MWD by seeking alternative water supply sources to diversify its supplies and improve water supply reliability. SDCWA turned to IID, which was seeking additional ways to comply with the State Water Board's 1984 conservation order, and negotiations commenced.

The 1998 Agreement for Transfer of Conserved Water (IID-SDCWA Transfer Agreement or Transfer Agreement) met SDCWA's and IID's complementary needs. As originally negotiated, the Transfer Agreement would transfer up to 300,000 AFY to SDCWA of water developed from IID's conservation improvements that SDCWA would fund. (Transfer Agreement, §§ 3.1, 3.2(a).) This agreement allowed IID to implement the long-term water conservation program that the State Water Board required while retaining IID's Colorado River priority.

Under California law, the State Water Board has jurisdiction to approve transfers of conserved Colorado River water, to approve changes in IID's state law post-1914 water rights, and to approve changes to IID's existing appropriative rights permits. Accordingly, after entering

[2] Although the transfers from the canal lining project are part of the overall QSA Agreements, they are subject of separate federal law and approvals. Environmental mitigation for the canal lining projects is unrelated to and funded separately from the QSA water transfers. (QSA-Joint Powers Authority (JPA), § 1.1(b); SB 654 § 3(d), (d)(2); ECSA, § 1.2(11)(ii).)

into the initial 1998 Transfer Agreement, IID and SDCWA submitted a joint petition to the State Water Board (State Water Board Petition) for approval of the water transfer. However, CVWD and MWD filed protests to the State Water Board Petition based on their position that federal law controls IID's water rights and any water that is not used by IID is available to them under the priority system.

In 2002, IID, SDCWA, CVWD, and MWD entered into the Protest Dismissal Agreement to resolve MWD's and CVWD's protests to the State Water Board Petition, under which (1) CVWD and MWD agreed to dismiss their protests; (2) IID and SDCWA agreed to amend their petition to decrease the water transfer to SDCWA from a maximum of 300,000 AFY to a maximum of 200,000 AFY, and make the 100,000 AFY difference available to CVWD or MWD; and (3) the parties agreed to set aside their disputes over applicability of state versus federal law to the water transfers at issue to allow the State Water Board hearing on the petition to proceed if the decision were designated non-precedential.

The State Water Board approved the amended IID/SDCWA petition, which authorized both the 200,000 AFY water transfer from IID to SDCWA and the 100,000 AFY water acquisitions from IID to CVWD or MWD. Among the mitigation measures the State Water Board ultimately imposed was a requirement that IID maintain for 15 years salinity and elevation levels in the Salton Sea that would have occurred in the absence of the QSA through IID's transfer of "Salton Sea Mitigation Water." To lessen potential short-term impacts on the Salton Sea, the State Water Board allowed IID to replace the water being lost to the Salton Sea with equal amounts of mitigation water for 15 years. Because the Salton Sea's salinity will continue to increase naturally and the Sea would not remain viable without a restoration program, the State Water Board expressly <u>*did not require*</u> mitigation of project impacts to the Sea after 2018:

> 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.

(Revised Order WRO 2002-0013, p. 44 (emphasis added).)

The Declining Salton Sea set the Stage for the 2003 QSA Legislation

The Salton Sea was formed in 1905-1907 after heavy floodwaters broke through an irrigation canal delivering Colorado River to the Imperial Valley. (Revised Order WRO 2002-0013, p. 7.) While it was initially thought that the Salton Sea would dry up 10 to 20 years later, the Salton Sea was sustained by agricultural drainage flows, the majority of which originate in IID. (Revised Order WRO 2002-0013, p. 8.) Because the Salton Sea has no outlet, all the salt and nutrients flowing into the Sea continue to accumulate. (*Id.*)

Prior to the QSA, restoration of the Salton Sea had been contemplated by the United States and the State. (PL 102-575 § 1101, PL 105-372 § 101.) Numerous studies on how to restore the Sea had been conducted over the years, but no planned restoration was imminent when negotiations for the QSA agreements were nearing conclusion. The last restoration efforts before the QSA was finalized occurred in 2000 based on federal legislation (Salton Sea Reclamation Act of 1998 PL 105–372), and consisted of preparation of a separate draft EIR/EIS and report identifying numerous potential restoration alternatives for the Sea, none of which were acted upon.

When the QSA negotiations began, all parties were aware, and the Legislature expressly acknowledged, that the Salton Sea was in a natural state of decline due to reduced deliveries of surplus water, agricultural conservation practices already in place, a decline in inflows from reduced drainage from Mexico, inflows from the New and Alamo Rivers, and drainage from CVWD and IID-area farming. Completely apart from the QSA water transfers, the Sea's salinity had been increasing over time, and the Sea's water level declined. This reduction in salinity and elevation, projected to occur even in the absence of the QSA water transfers, was expected to eventually eliminate the fishery and adversely impact migratory birds that rely on this fishery.

Without mitigation, the QSA Agreements could make a small contribution to the ongoing decline of the Sea.[3] (SB 654, § 2, adding § 1(c); Leg. Hist. of SB 654, Report of Assembly Committee on Water, Parks and Wildlife; Leg. Hist. of SB 277, Cal. Resources Agency Enrolled Bill Report).) The State did not want mitigation for the QSA Agreements to interfere with future plans to restore the Sea and wanted to ensure that mitigation would be consistent with any future efforts to restore the Sea. (Leg. Hist. of SB 654, SB 654 SEC. 2, adding § 1(c); Leg. Hist. of SB 654, Report of Assembly Committee on Water, Parks and Wildlife; Leg. Hist. of SB 277, Cal. Resources Agency Enrolled Bill Report.) The Water Agencies were rightfully concerned that they might be pressured to pay the high cost of restoration once such plans were formulated simply because the QSA project went first. (SB 654 SEC. 2, adding § 1, (c)], SB 654, § 3(c)]; Leg. Hist. of SB 654, Report of Assembly Committee on Water, Parks and Wildlife; Leg. Hist. of SB 277, Cal. Resources Agency Enrolled Bill Report.) In other words, the Water Agencies were concerned that they might be improperly forced to contribute more in mitigation costs than was warranted by the QSA's actual impacts on the Sea.

The environmental review process for the QSA water transfers specifically identified impacts to the Salton Sea. This brought to the forefront tensions between transfers of water that reduce inflows to the Salton Sea and a goal of developing a Salton Sea restoration plan. In 2002, the Legislature addressed these matters by enacting Senate Bill 482 (Kuehl), 2002 Stat, ch. 617. which included a requirement that implementation of the QSA during its first fifteen years "(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."

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[3] Cost estimates for restoration options when the QSA Agreements were under serious consideration were around $1 to 2 billion. (US Department of Interior, Salton Sea Study, Status Report, January 2003.) The mitigation estimate for the QSA water transfers, in contrast, was $178 million.

Following passage of this legislation, Assembly Speaker Emeritus Robert M. Hertzberg led a process in which staff and negotiators for CVWD, IID, MWD, and SDCWA met with officials from the wildlife agencies to develop modifications to the transfers needed to meet SB 482's requirements and to negotiate corresponding revisions to the draft QSA agreements.[4]

The 2003 QSA Legislation Ensured that Impacts of the Transfer Would be Fully Mitigated and Funded, and Salton Sea Restoration Funded Separately by the State

The Legislature recognized that the QSA Agreements were integral to resolving longstanding disputes regarding the River and preventing a federal mandate that would abruptly and drastically reduce California's use of Colorado River water. In September 2003, the Legislature passed three bills "necessary to implement the QSA" — Senate Bills 277, 317, and 654 (Stats. 2003, chs. 611, 612, and 613, respectively.)

These bills provided mechanisms to implement mitigation of the impacts on the Salton Sea as identified in the IID-SDCWA Transfer Project Environmental Impact Report/Environmental Impact Statement by: (1) authorizing DFG to enter into a joint powers authority agreement that would allocate the cost of environmental mitigation among IID, CVWD, SDCWA, and DFG; (2) capping IID, CVWD, and SDCWA's mitigation costs at $133 million in 2003[5] dollars, and imposing a legislative mandate that the State would assume responsibility for mitigation costs, if any, that exceed $133 million; (3) requiring IID, CVWD, and SDCWA to pay $30 million to a Salton Sea Restoration Fund created by the legislation and limiting their financial responsibility to this sum for any restoration efforts; (4) assuring that implementation of the QSA would be consistent with any future Salton Sea Restoration Project; (5) identifying a special fund from which the State could meet any obligations which might arise under the joint powers authority — the Fish and Game Preservation Fund; (6) allowing incidental take permits to be issued for the QSA, including the take of fully protected species; (7) setting up funding for the prospective Salton Sea restoration program; and (8) extending the deadline for completion of the canal lining projects for which the Legislature had previously appropriated $200 million. (Wat. Code, § 12560 et seq.; SB 317; SB 277; SB 654.)

The three bills resolved the dilemma between mitigation and restoration – often improperly conflated when discussing Salton Sea restoration. SB 654 and the other QSA statutes created two express limitations on the water-agency parties to the QSA-JPA. First, SB 654

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[4] Participants in the negotiations also included representatives from other Colorado River water rights holders, California's Department of Water Resources (DWR) and the California Department of Fish and Game, now called the California Department of Fish and Wildlife (DFW), the California Legislature, the United States Departments of Agriculture and Interior, Reclamation, the United States Fish and Wildlife Service, and each of the other six Colorado River Basin states. Public interest groups, environmental groups, farmers, the County of Imperial, local farm bureaus, and other farming representatives also participated at various stages of the negotiations.

[5] The QSA-JPA states this amount in 2003 dollars. (QSA-JPA § 9.1.) Translating the $133 million into future-value nominal dollars, the actual sums to be paid by the Water Agencies over the life of the Transfer Project total $387,673,132. This sum is allocated by the ECSA as follows: CVWD $73,554,872; IID $209,506,885; and SDCWA $104,611,375.

limits the mitigation for which the QSA- JPA funds can be utilized. It defines "environmental mitigation requirements" as measures required by the EIR/EIS and Addendum for the Transfer Project and QSA. (SB 654 SEC. 3(d).)

Second, SB 654 calls on the water agency parties to contribute $30 million to the Salton Sea Restoration Fund created in SB 277 and 317.[6] However, other than IID, CVWD, and SDCWA's $30 million contribution, SB 654 plainly states that IID, CVWD, and SDCWA will not be responsible for any Salton Sea restoration costs. (SB 654 SEC. 3(c).) The QSA-JPA contains this limitation in Sections 1.1(d) and 14.3.

Among other things, the QSA legislation established several mandatory obligations on the part of the State to develop a plan to address Salton Sea restoration. Specifically, the QSA legislation provides that the California Secretary of Resources shall coordinate with other agencies to prepare a restoration study. In summary, the restoration study was required to include all of the following: (a) an evaluation of and suggested criteria for the selection of alternatives; (b) an evaluation of the magnitude and practicability of the costs of construction, operation and maintenance for each; (c) a recommended plan for the use of transfer water; and (d) the selection of an alternative and a funding plan to implement the alternative. (SB 317, SEC. 1.)

With the passage of the QSA legislation and the State's assumption of specific duties, the QSA parties reasonably believed that California would develop a feasible restoration plan, which would have had a material impact on the cost of mitigating environmental impacts from the QSA and would also have reduced or eliminated the likelihood that the State would be required to satisfy its obligation to cover environmental mitigation costs in excess of the funds contributed by IID, SDCWA, and CVWD.

The State has Failed to Live Up to Its Obligations

In May 2007, the California Resources Agency submitted to the Legislature a final Programmatic Environmental Impact Report that selected a preferred Salton Sea restoration plan. The preferred alternative had a capital cost estimated at $8.9 billion and annual operating costs of $142 million per year. However, the submitted restoration plan was materially deficient because it failed to include a viable funding plan as required by Fish and Game Code Sec. 2081.7(e)(1)(B) and (D).

The submitted study identified funding sources that could be available for Salton Sea restoration, including funds from state, federal, and local sources, as well as user fees, and from a potential Salton Sea Infrastructure Financing District. However, no information was provided on practicable ways to actually fund the restoration as was required by the legislation. This missing information is critical to the selection of a preferred alternative and it remains completely absent today. As of the scheduled date of this Workshop, there is no credible financing plan that has even been proposed, let alone been adopted, to support Salton Sea restoration.

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[6] SDCWA contributed $12,485,889 as its share of the Salton Sea Restoration Fund in 2004.

In 2008, the California Legislative Analyst's Office (LAO) produced a follow-up report entitled "Restoring the Salton Sea." This comprehensive report provided yet still new recommendations for moving beyond the state's selection of a preferred alternative and beginning actual restoration. The recommendations proposed that the Legislature: set expenditure priorities for restoring the Salton Sea; formally adopt a restoration plan in statute; and adopt interim measures to meet priority mitigation requirements until the restoration plan and funding are in place.

The LAO noted the limited nature of the existing funding plan and recommended the inclusion of a comprehensive financing plan within the adopted restoration plan as required by the QSA legislation. This would provide specific direction on allocating funding responsibilities among the potential funding sources, using realistic assessments of the ability to obtain the funds. The LAO recommended developing a schedule that matches forecast expenditures with funding sources. The report noted that the financing plan should respect existing limitations on the water agencies' funding contributions for restoration. However, the Secretary of Resources did nothing in furtherance of these recommendations.

The QSA legislation mandated that the Secretary of Resources establish an advisory committee and shall consult with it through all stages of the alternative selection process. Moreover, there is a requirement that the Secretary of Resources use all available authority to execute a MOU with the Secretary of the Interior for the purpose of obtaining federal participation in the restoration of the Salton Sea. (SB 482, SB 317, Section 2081.7(e)(1).) The Secretary of Resources has not executed a MOU with the Secretary of Interior and it is not believed that there has been any effort expended by the Secretary of Resources in pursuit of this objective.

To date, the Legislature has taken no action on either the preferred alternative or funding authorization for any large-scale restoration effort. In 2010, further legislation was enacted, establishing the Salton Sea Restoration Council (SB 51 (Ducheny 2010)) for the purpose of evaluating a Salton Sea Restoration Plan to be submitted to the Governor and Legislature by June 30, 2013.[7] By all credible accounts the State has failed to discharge its obligations under the authorizing statutes. But this failure has no bearing whatsoever on whether the QSA is being properly implemented.

Only Incremental Salton Sea Restoration has been Accomplished

While the last two years have seen some preliminary progress toward restoration, much more is needed to address this complex and long-standing pre-QSA restoration issue. There are now a number of early habitat demonstration projects that are permitted but have only partial funding. The California State Auditor's Report 2013-101 from November 2013 indicates that $32.1 million has been put into the Salton Sea Restoration Fund through fiscal year 2013. Another $72 million may be available from Prop 50, Prop 84, and the Wildlife Conservation Board; however, these sums are insufficient to fund any comprehensive restoration plan.

[7] In 2012, Governor Brown disbanded the Salton Sea Restoration Council.

Currently, there are only three Salton Sea restoration projects scheduled for completion in the near future: (1) California's Species Conservation Habitat to restore shallow water habitat (640 acres); (2) the joint U.S. Fish & Wildlife Service/IID Red Hill Bay project (650 acres) to provide saline shallow water shorebird habitat, and reduce emissive dust; and (3) the Torres–Martinez wetlands (105 acres). These projects constitute the extent of habitat or air quality management projects currently scheduled for construction around the Salton Sea by 2017. Each of these restoration projects has plans for subsequent expansion, but to date none has secured the funding necessary to expand beyond the listed acreage. To effectively address this complex and long-standing pre-QSA restoration issue, a multitude of stakeholders must be convened with leadership from the Governor's Office to expeditiously develop a path forward that permanently addresses the potential long-term health and environmental impacts to the communities surrounding the Salton Sea.

Consistent with their Obligations, the QSA Parties are Fully Mitigating Project Impacts

As required, the parties to the QSA water transfers have fully mitigated the effects of those water transfers. Concurrently, as described above, the State was given ample time to fulfill its obligation as to restoration of the Salton Sea. Restoration was not a commitment of the QSA and not a condition of the QSA water transfers.

Consistent with the State Water Board Order, the SDCWA/IID Water Transfer EIR/EIS required that for the first 15 years of the 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, CVWD and MWD. Implementation of this mitigation would: (1) avoid impacts to fish and birds by stabilizing salinity impacts for 15 years; (2) and avoid air quality impacts from dust emissions during this period because there would be no impacts to the elevation of the Salton Sea.

The SDCWA/IID Water Transfer EIR/EIS also included a four-step air quality mitigation program, to be implemented after the mitigation water is terminated. The four steps consisted of: (1) restricting access to the Sea's newly exposed shoreline to prevent soil disturbance; (2) research and monitoring to provide a basis for predicting how the shoreline would respond when exposed; (3) offsetting emission reduction credits; and (4) if step 3 is not feasible, reducing direct emissions at the Sea, such as re-wetting emissive areas. The QSA mitigation also included the management of Salton Sea drain habitat for desert pupfish and the creation of a managed marsh for bird species habitat, nesting, and roosting for multiple bird species. SDCWA is a member of the QSA JPA, which is responsible for funding the measures adopted to mitigate the environmental impacts of the QSA water transfers on the Salton Sea. The QSA JPA Parties (SDCWA, CVWD and IID) have made, and continue to make, all agreed upon contributions for environmental mitigation. The QSA JPA has been implementing the QSA mitigation projects as was required by the QSA and State Water Board.

The scope of the QSA JPA is limited to mitigation costs for the QSA water transfers as expressly authorized by the Legislature. In addition to the QSA authorizing legislation, as a matter of law, mitigation for the QSA Agreements is properly limited to dealing with the impacts they cause. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1167.)

SDCWA General Manager Maureen Stapleton serves as one of the four QSA JPA commissioners; and Colorado River Program Director Dan Denham serves as the SDCWA's alternate. In the 2003 QSA JPA, SDCWA agreed to pay $52.2 million (2003 dollars) to the QSA JPA in annual installments beginning in 2003 and running through 2025. SDCWA has twice agreed to accelerate payments to keep the QSA JPA projects on schedule—once in 2007, with a $6.3 million advance payment, and a $10 million advance payment scheduled in 2015. A total of 520,000 AF of mitigation water has been scheduled for delivery to the Salton Sea through 2015, at a total cost of $60 million.

As described in the 2013 Annual Report of IID Pursuant to SWRCB Revised Order WRO 2002-013, the current "bucket for bucket" mitigation strategy "will mitigate salinity and elevation impacts of IID's water transfers to SDCWA for up to 15 years by causing replacement inflow to the Salton Sea to offset the reduced inflow caused by such transfers to SDCWA." (Annual Report, page 13.) Salton Sea elevation changes from January 1, 2003, through December 31, 2012, "are occurring for reasons independent of the water transfer Project, which has been fully mitigated with replacement water, as required." (Annual Report, pages 24 and 85; Appendix 4.)

At the same time, the Imperial Valley is currently, and has been for the past several decades, in a state of non-compliance with regard to PM-10 emissions. This is primarily due to the nature of a desert community with fugitive windblown dust emissions, heavy farming, unpaved roads, and unregulated emissions from Mexico. In addition, since 2003, the Salton Sea has continued to shrink and expose playa due to a downward trend in river inflows from Mexico, inflows from agricultural tailwater and rainfall. Air quality impacts due to the QSA water transfers will not occur during the first 15 years of the project due to implementation of the replacement water mitigation strategy. Because the QSA transfers are being fully mitigated, none of the exposed playa is currently related to the QSA water transfers.

In the absence of a restoration program, the State Water Board recognized that the water level and the total surface area of the Salton Sea would potentially decrease further in the long term following the scheduled end of the mitigation water, and required that IID follow the phased approach to air quality mitigation identified in the SDCWA/IID Water Transfer EIR/EIS. To prepare for the scheduled end of mitigation water in December 2017, the QSA parties have been following this phased approach including research and monitoring, and carrying out pilot projects at the Salton Sea under the four-step air quality mitigation plan to determine how best to reduce air emissions when the mitigation water obligation ends.

Lasting Mitigation Can Aid Restoration

Mitigation under the QSA can be coordinated with Salton Sea restoration efforts, which aims to restore habitat and reduce dust emissions. For example, the Managed Marsh complex is part of the mitigation required under the QSA water transfers and provides valuable information to guide future restoration efforts. The Managed Marsh provides mitigation for both the reduction in water volume in the drains, caused by the transfer and provides mitigation for IID's operation and maintenance activities related to the conveyance of irrigation water. Cost of design, construction and operation is funded through the QSA JPA. The Managed Marsh is a three phase complex to total approximately 959 acres of wetland, riparian and scrub-shrub habitat for various drain species such as raptors, wading and shore birds, waterfowl and

passerines. Phase I was completed in 2009, Phase II was completed in 2014, and Phase III will be completed in 2019. Information gathered from the Managed Marsh can be used to improve the design and management techniques of various Salton Sea restoration projects that involve creation of habitat.

In addition, mitigation required under the four-step air quality program can be coordinated to maximize the restorative effect. As part of this program, the QSA JPA has identified and begun implementing air quality pilot projects to control particulate matter emissions that could result as playa is incrementally exposed beginning in 2018 as a result of the QSA water transfers. This program provides a science-based, adaptive management plan to characterize air quality and develop and implement effective dust control mitigation measures around the Salton Sea. To characterize ambient air quality, the QSA JPA has funded the installation and ongoing operation of an air quality monitoring network since 2010 to measure meteorological conditions and ambient air quality including particulate matter at six locations around the Sea. This monitoring provides information to identify source areas that require dust control and inform how dust control measures should be selected and designed.

Air quality pilot projects to control dust emissions identified for implementation in the Air Quality Mitigation Program include playa surface stabilization with surfactants, wind barriers such as hay bales, tillage, and plant community enhancement. The initial selection for pilot projects is based on previous application and existing literature on large-scale playa dust control. Pilot projects will be monitored for a number of years to evaluate overall performance, dust control efficiency, and other parameters including habitat quality. While the focus of the Air Quality Mitigation Program is on mitigation of the QSA water transfers, the results of air quality pilot projects are also directly applicable to long-term Salton Sea restoration.

Simply continuing to provide water to the Salton Sea is wasteful, not a beneficial use, and should not be continued after 2017. Instead, the State should use the QSA mitigation efforts as a guide to focus on near-term projects to achieve immediate air quality and habitat protection, which can serve as the basis for a longer-term restoration plan.

Accordingly, for all these reasons, it cannot be demonstrated there is a failure of an express condition of the transfer set forth in the body of Revised Order WRO 2002-0013 that warrants the State Water Board exercising jurisdiction.

The State Water Board should Request the Governor's Office to Lead the Restoration Discussions with the Board's Assistance

As referenced above, the Revised Order WRO 2002-0013 did not condition the QSA water transfers on Salton Sea restoration. Moreover, all effects attributable to the QSA water transfers are being fully mitigated. As predicted in Revised Order WRO 2002-0013, the Salton Sea has been losing size, but this shrinkage cannot be attributed to the QSA water transfers.

Consequently, as an alternative to the relief requested by IID, the State Water Board could refer the subject to the Governor's Office for the formation of a stakeholder task force that would be supported, for the convenience of the task force, by the fact-finding role of the State Water Board. The State Water Board is not the appropriate forum to address restoration of the Salton Sea.

There is precedent for this approach. In fact, negotiations on the QSA itself were led by the direct involvement of Governor Gray Davis and his staff. The independent task force comprised of interested and responsible state representatives, the QSA parties, non-governmental organizations and members of the public would work to develop a feasible and financially sound Salton Sea Restoration plan. Consistent with the California Water Action Plan, the Natural Resources Agency and the Salton Sea Authority can present their roadmap for the Salton Sea restoration and economic development of renewable energy projects. From time to time, the parties may also call upon the State Water Board to engage in fact finding to support agreements among the stakeholders.

Conclusion

The Salton Sea should be restored. The State of California should assume its responsibility to designate a restoration alternative coupled with a financing plan. The best way to achieve this objective is not holding more public meetings pursuant to Revised Order WRO 2002-0013, but seeking a consensus-based resolution through a stakeholder task force managed by the Governor's Office. The task force must focus on and prioritize near- and long-term projects that achieve immediate air quality and habitat protections to permanently address potential health and environmental impacts to the communities surrounding the Salton Sea.

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