



December 30, 2015

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comment Letter: Salton Sea

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

The Imperial Irrigation District and Imperial County commend the State Water Resources Control Board for convening this public workshop so that it can continue to monitor and direct the progress of the Salton Sea Task Force and other agencies' efforts to develop and immediately implement a Salton Sea Management Plan (Plan) for restoration of the Salton Sea.

During recent water crisis conditions, the Governor and his administration have recognized the unique role of the State Water Board in California's administrative structure. The State Water Board is authorized to make and enforce water rights decisions that balance the interests of protecting vested water rights, promoting beneficial use, and protecting the environment and human health. Thus, it is appropriate for the State Water Board to take a leading role in protecting public health and the ecosystem from the devastation that will be caused by a failure to restore the Salton Sea. The State Water Board plays a critical role in the development of a restoration plan. Specifically, this Board has a responsibility to set and prioritize the goals and objectives that a restoration plan should achieve, to ensure that any ultimate restoration plan is designed adequately to accomplish those goals and objectives, and to monitor a restoration plan's progress in meeting those goals and objectives.

Under the supervision and direction of the State Water Board, all agencies sharing jurisdiction must develop, adopt and implement a practical and sustainable program for restoration of the Salton Sea that will achieve two primary goals: 1) protection of human health; and 2) preservation of wildlife habitat. Furthermore, there must be adequate funding to make this possible. IID and Imperial County have embraced these goals and are actively working to make them happen.

We welcome and endorse the Governor's action in empowering the State Water Board to require state agencies to take action to carry out his mandate. As discussed more fully below, IID and the County urge this Board to take whatever action is necessary to

ensure that the responsible agencies develop and implement a comprehensive plan for Salton Sea restoration on a realistic timetable.

Background

The State's obligation to develop and implement the restoration plan arises from California's commitment to restore the Salton Sea as a *quid pro quo* for IID's agreement to the transfers of water under the Quantification Settlement Agreement (QSA). This commitment was solidified in the State Water Board's 2002 Order in which it reserved continuing authority to modify requirements of this order to protect the Salton Sea. However, since 2002, there has been little progress, at best, toward fulfilling this obligation when IID filed its Petition for Modification of Revised Water Rights Order 2002-0013 (Petition) in November of 2014 requesting that the State Water Board exercise its continuing jurisdiction over this issue. In response to the Petition, a workshop examining the issue was held on March 18, 2015.

At the March workshop, there was consensus that the State's failure to restore the Salton Sea will lead to the rapid degradation of air quality in the region and cause irreparable damage to the health of the residents of Imperial and Riverside counties and lead to the destruction of the region's ecosystem supporting migratory bird and other species. The urgency for action was demonstrated to be even more critical because IID's mitigation water deliveries to the Salton Sea to offset the salinity impacts of the conserved water transferred under the QSA transfers will end by December 31, 2017. Finally, it was observed that a complete breach by the State of its obligation to restore the Salton Sea could jeopardize the QSA transfers and water supply reliability in Southern California. At the conclusion of the workshop, a common theme prevailed: continued inaction by the State at the Salton Sea is not acceptable.

Following the workshop, the Governor formed a task force and appointed an assistant secretary for Salton Sea policy to develop new and achievable restoration plans. The task force announced in early October that the Natural Resources Agency is committed to the immediate implementation of a Salton Sea Management Program that prioritizes protecting regional air quality and responding to habitat impacts resulting from water transfers. It is important that these actions are noted to be an essential means of maintaining the security of California's Colorado River water supply.

In July 2015, IID and Imperial County released the draft *Salton Sea Restoration and Renewable Energy Initiative Framework Document* and associated *Executive White Paper*, which outlined an inclusive range of potential actions and realistic strategy for restoring the Salton Sea.

Time for Action is of the Essence

IID and Imperial County urge the State Water Board to direct all of the agencies sharing jurisdiction to confirm the principle that time for action is of the essence. When IID filed its Petition, the Salton Sea region stood just over three years from the precipice of December 31, 2017. On that date, IID's mitigation water deliveries to the Salton Sea will cease, consistent with the State Water Board's 2002 Order. It is even more crucial now that the responsible agencies adopt immediate and comprehensive measures to

protect the region's air quality and fish and bird habitat from the impacts of the drastically reduced elevation, increased salinity and dramatic increase of exposed playa along the Salton Sea's shoreline. Unfortunately, upon the convening of this workshop, the State and its responsible agencies will have less than two years to implement these actions.

At the conclusion of these comments, IID and Imperial County will provide a suggested roadmap for the State Water Board's near-term direction and oversight of task force restoration planning and implementation. As we approach December 31, 2017, it remains crucial for the State Water Board to actively exercise its continuing jurisdiction over the water transfers and their looming impacts, through regular oversight workshops. Such workshops are necessary to provide accountability and ensure the transfers' continued viability given their significance to California's water supply, particularly during the time of this record-breaking drought.

Protecting Public Health and Environment Must be Primary Goals

The question is not whether action is taken; it is whether the proposed action achieves the vision, mandates and goals shared by Governor Brown, the State of California, the State Water Board, IID, Imperial County, and the environmentally related non-governmental organizations (NGOs) relying on the State to make good on its promise.

Consultations with the task force and review of its initial steps toward a Salton Sea Management Program raise a central concern that common goals have not been identified. The primary purpose of restoration is development of a smaller but sustainable Sea that will protect the public health and the environment so critical to this region. Secondary goals such as development of renewable energy resources, recreation and economic development should be considered when consistent with these primary goals. Renewable energy production on exposed playa, for instance, is likely to go hand-in-hand with the goal of mitigating fugitive dust emissions. Additionally, providing enhanced economic opportunity in Imperial and Riverside counties will help to offset the significant impacts of the QSA water transfers on those communities.

After a thorough review, it is unclear to IID and Imperial County whether the task force's proposed Plan is properly focused on the primary goals and objectives of Salton Sea restoration, nor is it clear that the State's proposed actions are properly scaled over the short, medium and long-term to address the full extent of playa exposure and habitat loss, identified by the best current modeling, as a result of the water transfers. It is also not clear whether the management program is consistent with the State Water Board's 2002 Order, the conditions for approval of the QSA transfers established therein, or the Legislature's contemporaneous and intertwined commitment to undertake restoration in the Salton Sea Restoration Act (SB 277, 2003). These binding legal guideposts demonstrate that avoidance of adverse impacts on air quality and the protection of habitat require that a state management program for restoration of the Salton Sea address these issues first and foremost. In doing so, the Plan will ensure the short, medium and long-term viability of the QSA water transfers.

IID and Imperial County urge the State Water Board to utilize the opportunity afforded by this workshop to scrutinize the proposals made by IID and the County and the task force's proposed efforts to ensure they are consistent with (a) the requirements and expectations embodied in the 2002 Order; (b) the binding legislation; and (c) are based upon sound policy in prioritizing protection of public health and the environment. Should the State Water Board perceive that the task force's proposals do not adequately address these primary goals of Salton Sea restoration, it must not hesitate to provide a prompt and direct corrective message to the agencies to return to the course mandated by the Governor, rather than misdirecting the State Water Board's efforts to serve objectives outside the specific requirements embodied in its 2002-0013 Order.

The remainder of these comments will detail these concerns and propose sound principles for evaluating and directing task force restoration efforts to ensure that the most compelling QSA impacts are properly, adequately and feasibly addressed.

A restoration plan must have two paramount objectives: protection of the air quality and public health of the residents of Imperial and Riverside counties, and preservation of the significant habitat values that have been provided by the ecosystem of the Salton Sea. These restoration objectives are written into California law: in committing the State to restore the Salton Sea, the Legislature expressly mandated that a restoration plan must prioritize the protection of air quality, public health, and the environment. (Fish & Game Code, §§ 2931, 2940.)

The Legislature had good reason for identifying these as the key goals of a restoration plan. As discussed in IID's Petition, absent a restoration plan accomplishing these goals, the QSA water transfers *could not have gone forward*. (Petition at pp. 17-19, 30-33.) Section 1736 of the Water Code, which governs petitions for long-term water transfers, requires this Board to approve any such transfer, and specifies that the State Water Board may give its approval *only* "where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses." The Legislature determined that restoration of the Salton Sea was necessary to meet that standard. As a result, the Legislature not only committed the State to restoring the Salton Sea, but also set forth in detail the specific goals a restoration plan would need to achieve.

The overwhelming evidence confirms that the Legislature was correct in anticipating that a restoration plan accomplishing the twin goals of protecting public health and the environment was an indispensable element of the QSA. As detailed in the Petition (at pp. 9-10, 46-47), the end of deliveries of mitigation water to the Salton Sea in 2017 is projected to expose tens of thousands of acres of playa. That, in turn, threatens to dramatically worsen the already-poor air quality of Imperial and Riverside counties, with potentially catastrophic effects on public health. As IID also has explained (Petition at pp. 10-11, 45-46), the decrease in inflows is projected to make the Salton Sea too saline to support any fishery, which will devastate the migratory bird population that has made the Salton Sea a crucial stopover on the Pacific Flyway and one of the most valuable bird habitats in the world.

This Board's statutory and constitutional mandate would not have permitted it to approve the QSA water transfers without action to stop these severe public-health and environmental consequences. (See, e.g., Water Code, § 1736; *Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419.) Similarly, the State Water Board's *ongoing* obligation to ensure that the QSA transfers do not have unreasonable public-health and environmental effects means that if a restoration plan fails to achieve these objectives, the continued legal viability of the QSA transfers may be threatened.

To ensure that a restoration plan adequately protects air quality, public health, and the environment, the State Water Board should ask at least the following questions:

- Does the plan minimize the area of exposed playa?
- Does the plan allow for adequate provision for dust control on exposed playa?
- Does the plan create the appropriate type and amount of habitat area to preserve critical species and preserve the Sea as a stopover on the Pacific Flyway?
- Does the plan facilitate the implementation in the short term of shovel-ready, "no regrets" projects to help address the dramatic change in water elevation and salinity that will immediately occur after 2017?
- What are the specific timeframes for completion of the short-term, medium-term and long-term projects and actions, to ensure that they keep pace with air quality and habitat imperatives?
- Is the plan consistent with the best science concerning habitat creation, water quality and dust control?
- What metrics are there to verify that proposed actions will address the changes in habitat and the protection of human health?
- Is the plan sufficiently flexible to accommodate variations in inflows from year-to-year and throughout each year?
- Is the plan constructible and cost-effective from an engineering perspective?
- Does the plan include a realistic cost analysis and funding mechanism?

As the State Water Board hears about possible restoration plans, we urge this Board to keep these issues in mind and to ensure that a restoration plan best accomplishes the goals identified above. IID and the County recognize that, due to the complexity of the situation, the State Water Board will need to evaluate proposed plans based on their overall effect in meeting the State's goals of protecting public health and the environment while also developing more specific metrics to determine how best to proceed.

Roadmap: Long-Term Management and Restoration Plan by December 15, 2016

IID and the County recognize that successfully addressing the challenges at the Salton Sea will not be completed in 2016. Instead, protecting public health and the environment in Imperial and Riverside counties will be a long-term commitment by the State of California, working with our agencies and other regional partners. Developing a long-term plan and partnership is the immediate task for 2016. IID and the County propose that the State Water Board require the four agencies that have been invited to present at the January 5, 2016 workshop to collaborate – in an open and transparent process – with key stakeholders to develop and present a long-term management and restoration plan for the Salton Sea to the Board and the California Air Resources Board (CARB) no later than December 15, 2016.

To this end, IID and Imperial County propose the following roadmap for use by the administration, with the State Water Board and CARB filling the oversight roles outlined in the Salton Sea Task Force Agency Actions plan, in order to ensure that state agencies, IID, Imperial County, and other stakeholders all work together to protect the people and the environment of the Salton Sea region.

- December 15, 2016 - Long-Term Plan: As mentioned above, the Natural Resources Agency should take the lead, working with its sister agencies and stakeholders, to propose, and the State Water Board and CARB should review and approve, a long-term plan for the protection of public health and the environment in the Salton Sea region by December 15, 2016. This plan would build on the short and medium-term actions described in the Salton Sea Task Force Agency Actions plan and would describe the way in which the administration proposes to implement its long-term vision for the Sea.
 - Monthly Stakeholder/Agency Working Group Meetings: In order to meet this goal, the Natural Resources Agency should convene meetings – at least monthly – of stakeholder/agency working groups. There should be a policy group composed of administration officials, the general manager of IID, and the County Executive Officer of Imperial County, leading representatives of the environmental community, and similar officials from other key stakeholders. There should also be staff-level working groups to address biological/ecological resources, air quality, renewable energy development, and financing. All of the working drafts and other materials generated by the working groups can be placed on the SWRCB's Salton Sea webpage, so as to ensure transparency and public engagement.
 - January 2016 – CARB and State Water Board to Define Quantifiable Metrics: It will be essential for the State Water Board and CARB to define for the Natural Resources Agency and stakeholders how to determine whether or not progress is being made toward the administration's short, medium and long-term plans. To that end, IID and the County propose that the State Water Board and CARB define quantifiable metrics, with specific target dates, for the protection of public health and the environment. Due to the complexity of the Salton Sea ecosystem, we are not prepared to propose those metrics today; we anticipate submitting a

proposal to the State Water Board and CARB during January 2016. We suggest that the State Water Board and CARB discuss those metrics during the financing workshop or the “shovel-ready projects” workshops described below.

- Interim Deliverables defined by State Water Board and NRA: The State Water Board should, after consultation with the Natural Resources Agency, identify a series of interim deliverables that would be consistent with the progress needed for the State Water Board to be able to approve a long-term plan in December 2016. The State Water Board should, among other things, use the quarterly workshops proposed below to compel the Natural Resources Agency, its sister agencies, and stakeholders to meet those deliverable targets or explain the reasons for delay to this Board.
- February 2016 – Financing Workshop: The State Water Board, acting in concert with CARB, should convene a workshop of possible financing options for short, medium and long-term actions at the Salton Sea during February of 2016. This timing will allow the stakeholders to analyze the provisions in the FY 2016/17 state budget and to propose medium and long-term financing options for the State of California to meet its obligations to the Salton Sea region.
- April 6, 2016 –Short-Term, Shovel-Ready Projects Workshop: The State Water Board, acting in concert with CARB, should convene a workshop on short-term “shovel-ready” projects on April 6, 2016. This date will allow all stakeholders to respond to the report submitted to the Legislature by the Natural Resources Agency pursuant to AB 1095 (Garcia) on March 31, 2016. The purpose of the workshop would be to determine how to build on these projects to achieve the administration’s short and medium-term goals, as described in the Salton Sea Agency Actions plan.
- Now through December 31, 2018: Quarterly Workshops: The State Water Board, acting in concert with CARB, should convene quarterly workshops (to be held during the afternoons of board meeting days) through 2018 to receive updates from sister agencies and stakeholders on progress toward the development of the long-term plan and the construction and operation of projects at the Salton Sea. These workshops will also allow the State Water Board and CARB to supervise the State’s planning for the end of mitigation water in 2017 and the transition to a post-mitigation water future in 2018.

IID and the County, together with numerous NGOs and the communities comprising the Salton Sea region, have witnessed the result of a failure to take ownership of the State’s restoration obligation: over 10 years of foot dragging. Since the State Water Board’s continuing jurisdiction was not invoked earlier, this Board was relegated to the role of neutral referee waiting to see if the State would fulfill the requirements of the 2002 Order. The State has failed. IID’s Petition formally requested that the role of the State Water Board be shifted from that of referee-observer to the enforcer of the obligations and preconditions reflected in its order so that this failure can be remedied. The

Governor, through the formation of the task force, has endorsed the principles that time is of the essence and that the Board should monitor and, if necessary, should *enforce* the restoration obligation. The clock is ticking on an environmental and public health disaster. To continue with “business as usual” is not an acceptable outcome. This is a time for “all hands on deck.”

To its great credit, the administration and this Board have recognized the calamitous nature of the problem and have directed state agencies, led by the Natural Resources Agency, to develop and begin implementing a solution. Some initial progress is being achieved: the task force has issued very preliminary proposed actions, and IID and Imperial County have released a much more detailed framework document.

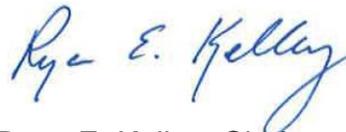
We have no illusions that the problem will be solved in the near term; but action must be taken immediately that will result in development of a tangible long-term restoration plan that meets the goals and objectives that the State Water Board mandated in its 2002 Order. In IID’s and the County’s view, the ultimate and best solution will be the product of the iterative, transparent process among this Board, the state agencies, IID, the County and other affected stakeholders as provided in these comments. IID and the County believe that success *is* possible, but it will require a sustained high level of effort by the administration and all stakeholders. Our proposals, as outlined in this letter, are intended to ensure that all parties’ feet are held to the fire; it is only with that constant pressure from the State Water Board and CARB that we can reach our goal.

We look forward to working with the State Water Resources Control Board and CARB and your respective staff members on this important effort.

Sincerely,



Stephen W. Benson, Board President
Imperial Irrigation District



Ryan E. Kelley, Chairman of the Board
County of Imperial

cc: Kevin E. Kelley, Imperial Irrigation District
Ralph Cordova, Imperial County
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