

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2017-0134

In the Matter of the Petition of

Imperial Irrigation District

Regarding State Water Board Revised Order WRO 2002-0013

SOURCE: Colorado River

COUNTY: Imperial

**ORDER ACCEPTING STIPULATION AND REVISING STATE WATER BOARD
REVISED ORDER WRO 2002-0013**

BY THE BOARD:

The Salton Sea is California's largest lake and was once famous for its sport fishery and recreational uses. It is approximately 35 miles long and up to 15 miles wide with approximately 360 square miles of water surface and 105 miles of shoreline. The surface of the Salton Sea lies approximately 232 feet below sea level. Approximately 90 percent of the freshwater inflow to the Salton Sea is agricultural drain water from the Imperial Valley. As the Salton Sea has no outlets, salts and nutrients concentrate in it and nutrients enhance the formation of eutrophic conditions. Currently, the Salton Sea has a salinity level that is approximately 50 percent higher than the ocean. The Salton Sea is a critical stop on the Pacific Flyway for migrating birds, including several threatened and endangered species. The Salton Sea National Wildlife Refuge was established in 1930 to preserve wintering habitat for waterfowl and other migratory birds.

The California Water Action Plan (January 2014) calls for protection and restoration of key ecosystems, including the Salton Sea. The California Water Action Plan provides that the California Natural Resources Agency (CNRA), in partnership with the Salton Sea Authority, will coordinate state, local and federal restoration efforts and work with local stakeholders to develop a shared vision for the future of the Salton Sea. The California Department of Fish and Wildlife and the California Department of Water Resources are immediately to begin implementing the first phase of this effort with the construction of

600 acres of near shore aquatic habitat to provide feeding, nesting and breeding habitat for birds. This project could increase to 3,600 acres or more with additional resources. Concurrently, CNRA and the Salton Sea Authority are developing plans for the Salton Sea that will evaluate additional restoration projects and identify economic development opportunities through renewable energy development.

On October 5, 1998, the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA) submitted a joint petition to the State Water Board. After amendments, the final petition requested the long-term transfer of up to 300,000 acre-feet of water per year authorized for diversion and use from the Colorado River under IID's water right permit 7643 as follows: (1) 200,000 acre-feet of water per year from IID to SDCWA; and (2) 100,000 acre-feet of water per year from IID to the Coachella Valley Water District (CVWD) and the Metropolitan Water District of Southern California (MWD). The approved transfer was for a term of 45 years with an optional 30-year renewal period, for a total of 75 years.

On October 28, 2002, the State Water Board approved the transfer with issuance of [Order WRO 2002-0013](#). In the order, the State Water Board concluded 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 was intended to mitigate project impacts to the Salton Sea 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 avoided prejudging those restoration-planning efforts.

The conservation and transfer of water from agricultural to urban uses is part of California's Colorado River Water Use Plan, which provides a framework to reduce California's use of Colorado River water to a 4,400,000 acre-foot apportionment in normal years. To facilitate implementation of the Plan, in 2003, IID, the State of California, other California water agencies, the federal government and Indian tribes entered into a collection of agreements commonly referred to as the Quantification Settlement Agreement (QSA). The QSA was intended to address longstanding disputes regarding the priority, use, and transfer of Colorado River water. The QSA established water budgets for the parties and authorized the contracting parties to pursue the long-term transfer of conserved water from IID to SDCWA, CVWD, and MWD.

An immediate, continued, and focused effort to manage a smaller but sustainable Salton Sea is necessary to protect public health and the environment.

The Salton Sea Restoration Act, California Fish & Game Code section 2931, subdivision (a) states that "it is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on the ecosystem."

The Salton Sea Restoration Act, California Fish & Game Code section 2942 provides that the Secretary of CRNA shall lead the state's efforts to restore the Salton Sea.

In May 2015, Governor Edmund G. Brown Jr. established the Salton Sea Task Force (Task Force). The Task Force includes experts from the CNRA and the California Environmental Protection Agency, including representatives from the State Water Board. The Task Force has sought input from tribal leaders, federal agencies, local water districts, local leaders, and other public and private stakeholders with an interest in the Salton Sea. The Task Force relied on information gathered during these meetings to produce its recommendations, which were released on October 9, 2015, and included a description of the principles necessary for a successful Salton Sea Management Program (SSMP). Governor Brown appointed Bruce Wilcox as assistant secretary for Salton Sea Policy at the CNRA to oversee habitat restoration efforts along the shoreline of the Salton Sea. As a part of the Task Force, the State Water Board regularly monitors and assesses progress on the implementation of the SSMP, and periodically holds public workshops as part of this function.

CNRA has prepared Phase 1 of the SSMP in furtherance of its Salton Sea restoration objectives and is committed to constructing and maintaining habitat and dust-suppression projects that address public health and environmental concerns. The SSMP contemplates future phases, and a long-range plan.

On November 18, 2014, IID filed a petition with the State Water Board, seeking to have the State Water Board enter an order to ensure success of Salton Sea restoration. The State Water Board conducted workshops in 2015 and 2016 to examine issues related to Salton Sea restoration.

On August 31, 2016, CNRA entered into a Memorandum of Understanding with the United States Department of the Interior that provides, in pertinent part, that the State will have a lead role in the cooperative effort to restore the Salton Sea. On January 18, 2017, CNRA and the United States Department of the Interior entered into an Addendum to the Memorandum of Understanding expressly identifying the importance of Salton Sea restoration as a critical component of plans for maintaining California's long-term water supply reliability.

On March 15, 2017, IID filed a motion with the State Water Board seeking to have an evidentiary hearing to address its November 18, 2014 petition regarding Salton Sea restoration. As a result of the motion, a draft stipulated order was developed for consideration by the State Water Board during a public workshop held on September 7, 2017. The draft stipulated order was revised following comments at the workshop and subsequent negotiations, resulting in a final draft stipulated order being shared with the State Water Board on October 20, 2017 (revised stipulation).

CNRA, IID, SDCWA, Imperial County, Audubon California, Defenders of Wildlife California, Sierra Club California, and the Pacific Institute (collectively Supporting Parties) have attested to their support for revised stipulation.

On October 26, 2017, the State Water Board provided notice of the revised stipulation and an opportunity to comment, circulated a redline reflecting the Supporting Parties' changes incorporated into the revised stipulation after the September 7, 2017 workshop, and provided notice that the State Water Board would consider adopting an order accepting the revised stipulation at its November 7-8, 2017 board meeting.

In addition to the mitigation requirements imposed by the federal and state endangered species laws, the California Environmental Quality Act (CEQA) (Pub. Resources Code, §§ 21000-21177) establishes requirements for the implementation of mitigation measures imposed to minimize the projected significant impacts of the Transfer Project. These mitigation measures and the Mitigation Monitoring & Reporting Program for the QSA transfers are not addressed by and are unaffected by this Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The State Water Board accepts in its entirety the revised stipulation submitted by the Supporting Parties attached as Exhibit A.
2. [Revised Water Right Order WRO 2002-0013](#) is amended to incorporate paragraphs 19-29 of provision 2 of Exhibit A as new ordering provisions of Revised Water Right Order WRO 2002-0013, pertinent to Salton Sea restoration.
3. As part of implementing this Order and to promote understanding of the issues within the vicinity of the Salton Sea, the Imperial Irrigation District, or another Supporting Party, shall:
 - a. make available Spanish-language materials summarizing the Salton Sea Management Program, projects proposed to implement the program, and annual status reports related to milestones;
 - b. conduct public meetings about the Quantification Settlement Agreement, the Salton Sea Management Program, and this Order.

4. The Division of Water Rights will work with the Supporting Parties to propose as part of an early milestone an appropriate monitoring framework to assess success in implementing the Salton Sea Management Program.
5. The State Water Board, consistent with the original transfer order and the stipulated order, retains continuing jurisdiction over Revised Water Right Order 2002-0013 as amended, as well as the stipulated order.
6. This Order is non-precedential pursuant to Government Code section 11425.60, subdivision (b).

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 November 7, 2017.

AYE: Vice Chair Steven Moore
Board Member Tam M. Doduc
Board Member Dorene D'Adamo
Board Member E. Joaquin Esquivel

NAY: None

ABSENT: Chair Felicia Marcus

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

Proposed SWRCB Order Revising WRO 2002-0013 (revised)

- A. Whereas, an immediate, continued, and focused effort to manage a smaller but sustainable Salton Sea is necessary to protect public health and the environment.
- B. Whereas, the Salton Sea Restoration Act, California Fish & Game Code section 2931(a) states that “it is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on the ecosystem.”
- C. Whereas, the Salton Sea Restoration Act, California Fish & Game Code section 2942 provides that the Secretary of the California Natural Resources Agency (CRNA) shall lead the state’s efforts to restore the Salton Sea.
- D. Whereas, CNRA has prepared Phase I of the Salton Sea Management Program (SSMP) in furtherance of its Salton Sea Restoration objectives and is committed to constructing and maintaining habitat and dust-suppression projects that address public health and environmental concerns. The SSMP contemplates future phases, and a long-range plan.
- E. Whereas, the Imperial Irrigation District (IID) filed a petition with the State Water Resources Control Board (Board) on November 18, 2014, seeking to have the Board enter an order to ensure success of Salton Sea Restoration.
- F. Whereas, the Board conducted workshops in 2015 and 2016 to examine issues related to Salton Sea restoration.
- G. Whereas, on August 31, 2016, CNRA entered into a Memorandum of Understanding with the United States Department of the Interior that provides, in pertinent part, that the State will have a lead role in the cooperative effort to restore the Salton Sea.
- H. Whereas, on January 18, 2017, CNRA and the United States Department of the Interior entered into an Addendum to the Memorandum of Understanding expressly identifying the importance of Salton Sea restoration as a critical component of plans for maintaining California’s long-term water supply reliability.
- I. Whereas, on March 15, 2017, IID filed a motion with the Board seeking to have an evidentiary hearing to address its November 18, 2014 petition regarding Salton Sea Restoration.
- J. Whereas, in addition to the mitigation requirements imposed by the federal and state endangered species laws, the California Environmental Quality Act (Public Resources Code §§21000-21177 et seq.) establishes requirements for the implementation of mitigation measures imposed to minimize the projected significant impacts of the Transfer Project. These mitigation measures and the Mitigation Monitoring & Reporting Program for the QSA transfers are not addressed and are unaffected by this Order.

The State Water Resources Control Board finds and determines as follows:

1. For the reasons set forth in Water Rights Order 2002-0013 (revised) and Water Rights Order 2002-0016, the delivery of “mitigation water” to the Salton Sea will terminate on December 31, 2017. Mitigation measures shall continue to proceed pursuant to the Mitigation Monitoring & Reporting Program as provided in the “Water Conservation and Transfer Project” Environmental Impact Report and Environmental Impact Statement certified by IID and Amended and Restated in a September 2003 Addendum and incorporated into Water Right Order 2002-0013 (revised) including the four-step air quality plan outlined therein.

Proposed SWRCB Order Revising WRO 2002-0013 (revised)

2. Water Right Order 2002-0013 (revised) is hereby modified by adding the following paragraphs as new independent conditions 19-29 pertinent to Salton Sea Restoration:
 19. Conditions 20-29 are independent conditions pertinent to Salton Sea Restoration.
 20. The Board finds and declares that restoration of a smaller but sustainable Salton Sea is feasible, that the State of California will lead and coordinate management efforts, and that implementation of projects to protect or improve air and water quality and wildlife habitat will be completed forthwith to avoid severe consequences to the State of California as a whole, to the health of Imperial and Coachella Valley residents, and to multiple wildlife habitats that exist at the Salton Sea and serve the Pacific Flyway.
 21. 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.
 22. The Board further finds that the ability to successfully manage a smaller but sustainable Sea will require cooperation from non-state property owners, surface lease holders, surface and subsurface mineral rights owners as well as air quality management districts with jurisdiction over the Sea to ensure land use entitlements are secured expeditiously and management project design is compatible with existing land use and water conveyance infrastructure.
 23. The Board further finds that successful management of the exposed Salton Sea lakebed requires the cooperation of the State of California and air quality managers with jurisdiction over the Sea to develop future air quality projects.
 24. 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 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.
 - a. By December 31, 2018, construction of habitat and dust-suppression projects shall be completed on 500 acres of exposed playa.
 - b. By December 31, 2019, construction of habitat and dust-suppression projects shall be completed on an additional 1,300 acres of exposed playa.
 - c. By December 31, 2020, construction of habitat and dust-suppression projects shall be completed on an additional 1,700 acres of exposed playa.
 - d. By December 31, 2021, construction of habitat and dust-suppression projects shall be completed on an additional 3,500 acres of exposed playa.
 - e. By December 31, 2022, construction of habitat and dust-suppression projects shall be completed on an additional 1,750 acres of exposed playa.

Proposed SWRCB Order Revising WRO 2002-0013 (revised)

- f. By December 31, 2023, construction of habitat and dust-suppression projects shall be completed on an additional 2,750 acres of exposed playa.
 - g. By December 31, 2024, construction of habitat and dust-suppression projects shall be completed on an additional 2,700 acres of exposed playa.
 - h. By December 31, 2025, construction of habitat and dust-suppression projects shall be completed on an additional 3,400 acres of exposed playa.
 - i. By December 31, 2026, construction of habitat and dust-suppression projects shall be completed on an additional 4,000 acres of exposed playa.
 - j. By December 31, 2027, construction of habitat and dust-suppression projects shall be completed on an additional 4,000 acres of exposed playa.
 - k. By December 31, 2028, construction of habitat and dust-suppression projects shall be completed on an additional 4,200 acres of exposed playa.
25. No less than 50% of the acreage described in condition 24 shall provide habitat benefits for fish and wildlife that depend on the Salton Sea ecosystem. Projects that provide habitat benefits for fish and wildlife do not include dust control projects that involve surface roughening, vegetation enhancement and surface stabilization.
26. CNRA will develop subsequent 10-year phases of the SSMP based upon available information, with the development of each phase commencing no later than midway through each current phase. Beginning with the development of Phase II, and in close coordination with stakeholders, CNRA will complete a long-term plan by no later than December 31, 2022.
27. Annual milestones are cumulative and if they are not achieved or exceeded in any given year, the amount of the shortfall or excess in that year will carry over to the following year.
28. No later than March 31 each year, the Board will hold a public meeting to receive oral and written comments on the status of Salton Sea Restoration, including a report from state agencies identifying: (i) completed projects and milestones achieved in the prior year; (ii) amount of acreage of completed projects that provide dust suppression and habitat, broken down by habitat type; (iii) upcoming projects to be completed and milestones to be achieved prior to the next annual progress report; (iv) the status of financial resources and permits that have not been secured for future projects; (v) any anticipated departures from the dates and acreages identified in condition 24; and progress toward development of the long-range plan described in condition 26. Should an annual milestone shortfall exceed 20 percent of a year's annual obligation, the report will also include a plan that will cure the deficiency within 12 months.
29. The Board reserves jurisdiction to further amend conditions 19-28 of this Order as necessary to ensure Salton Sea Restoration throughout the term of the QSA through its continuing jurisdiction under this Order.
3. This Order, like Water Right Order 2002-13 (revised) and Water Right Order 2002-16, is determined to be non-precedential pursuant to Government Code section 11425.60(b).