



October 11, 2002

State Water Resources Control Board
c/o Victoria Whitney, Program Manager
Hearings & Special Project Section
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95812-2000

Re: ***Salton Sea Authority's Comments on September 26, 2002 Draft Order
In the Matter of Amended Joint Petition of the Imperial Irrigation District
and San Diego County Water Authority for Approval of a Long-Term
Transfer to Conserve Water***

Dear Sirs and Madams:

The Salton Sea Authority thanks the State Water Resources Control Board for its patience and tenacity in carefully listening to and considering the concerns of the diverse stakeholders as it attempted to balance California's need to implement its 4.4 plan and California's commitment to protect the health and welfare of its citizens and its precious natural resources. The Authority requests that the State Board hold a hearing near the Salton Sea in the Imperial and/or Coachella Valleys to allow those particularly affected by the environmental consequences of the Order to voice their concerns.

The Authority believes that the draft Order allows the transfer to proceed without fully mitigating its impacts in a manner that significantly jeopardizes the environmental and human health in the Salton Sea region. The Order also compromises the Sea's restoration by terminating the inflow-related mitigation requirement after only 15 years, generating an expectation, that could become self-fulfilling, that the Sea will be abandoned after that time.

Given the regional, national, and international importance of the Salton Sea ecosystem, confirmed by both federal and state legislation, the Sea deserves more: full mitigation of transfer-related impacts, to be suspended only if it becomes clear that restoration is infeasible.

The Authority respectfully requests that the Order be modified to fully preserve the viability of the restoration project both during the initial 15-year period and thereafter. The Board should require at least the mitigation developed in the Final EIR and certified by IID: that replacement water be provided to mitigate transfer-induced losses at a high level of confidence until the Sea is unable to support its current fishery and wildlife. And the Order

should require that mitigation measures not be suspended unless and until the Board finds, after a full hearing, that restoration of the Sea is infeasible.

SB 482 Link

In fashioning the Order, the Board carefully considered some of the provisions of SB 482, the legislative response to the need to balance the conservation and transfer of water and the protection of vital environmental resources. As noted in the Order, in SB 482 the legislature found it important that: "actions taken to reduce California's Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the State." (Stats. 2002, ch. 617, section 1(c).)

Given the extreme sensitivity to salinity levels of the cost of a restoration project, the Board must err on the side of caution in fashioning interim salinity objectives in Order to achieve the objective of SB 482. "A sharp increase in salinity in the near term could render a salinity control project infeasible." (Order, p.50.)

In order to implement the intent of SB 482, the draft Order partially incorporates the Salton Sea Habitat Conservation Strategy (SSHCS) of the transfer's Final EIR. The SSHCS provides for replacement water to the Salton Sea to offset transfer-induced losses through the year 2030. The draft Order diminishes this requirement to replacement water for only 15 years. The State Board's unsupported reduction of mitigation requirements is extremely troubling.

While the Order seems to defer to IID's analysis in its EIR on nearly every other front, the Board relaxes this salinity management mitigation requirement by 50%. The State Board reasons that IID need only protect the Sea according to the mean (50%) confidence level. Notably, as the Draft Order (p. 45) itself acknowledges, if the mean salinity curve were used the 60 ppt standard (presumed collapse of the fishery¹) would be reached in the year 2023, not in 15 years. Despite the Draft Order including a long description of the statistics and assumptions and sensitivity analysis provided by IID, the State Board seemingly has thrown the analysis aside and simply mimicked the 15-year provision included in SB 482. Has the State Board ever so significantly reduced mitigation requirements provided by a petitioner?

The Order does not explain why the Board would adopt a mitigation measure that provides significantly less protection than the measure included in the petitioners' own environmental impact report. The Authority respectfully requests that the Board adopt the 95% confidence level included in the FEIR.

Furthermore, if the Board retains the mean (50%) condition, the Authority requests that the Order be clarified to provide that the mean baseline salinity is a confidence floor, and not a ceiling. Condition of approval 5A currently reads: "Permittee **shall** meet the mean modeled future baseline salinity trajectory, **instead** of the 95% confidence interval trajectory..."

That condition could be interpreted to require that petitioners not exceed the mean salinity trajectory, even if required to do so by another permitting agency. Federal and State wildlife agencies may well determine that their respective endangered species acts require a confidence level greater than 50% that the existence of endangered species will not be jeopardized by the transfer. Also, current negotiations among stakeholders may result in an agreement on salinity that requires a higher confidence level so that the Sea is protected.

¹ Unfortunately, there has been a myopic view of the Sea's importance to birds because of its fishery. The Sea is one of the most important inland areas for many birds, and particularly so for shorebirds. Shorebirds rely on invertebrates in the Sea that are also sensitive to salinity increases.

The “Measuring Stick”

The EIR baseline projects² over 100,000 acre-foot per year in in-flow reductions due to previously approved transfers and other factors. The Authority and others introduced substantial evidence during the hearing that the EIR baseline unreasonably overestimated baseline reductions in in-flows, reductions in elevations, and increases in salinity. Notwithstanding the petitioners’ promises to produce evidence to support its baseline calculations, they failed to do so.

The choice of a baseline will significantly impact the allowed increase in salinity during the mitigation period, and hence the continued viability of a restoration project. Given the legislative mandate to fully protect the viability of a restoration project and the sensitivity of such a project to salinity levels, the uncertain and unsubstantiated EIR baseline should be rejected as the standard for determining compliance with associated mitigation measures. A better measure would be replacing actual reductions of inflow to the Sea on a 1:1 basis for the required mitigation term (15 years, 30 years, etc.). Such a system has been the subject of consideration during recent negotiations among the QSA parties. Under such a system, the State Board should establish a review committee composed of interested stakeholders to annually review calculations of transferred and replacement water to ensure that objectives are met.

Year 15 Finding

The Board has reserved the authority to consider extension of the 15-year inflow-maintenance requirements. This reserve authority should be strengthened and more definite. The Board should commit to holding a hearing before the end of the 15-year period to determine if discontinuance or continuance of the replacement water obligation and the continuation of the transfer is in the best interest of the State³. An express condition to that effect would help prevent expectations to the contrary from becoming self-fulfilling. Such a statement would fully preserve the Board’s ability to honor the legislative intent expressed in SB 482 that the transfer be consistent with restoration of the Sea. The Board would retain maximum flexibility to respond to evolving understandings of the feasibility of restoring the Sea and increased understanding of air quality and other potential impacts.

Additionally, the Authority requests that the Board delete the finding that “after the 15-year mitigation period required by this Order, any impacts that occur [to the Salton Sea ecosystem] are unavoidable and unmitigable. To the extent that impacts occur, the SWRCB finds that the overriding considerations discussed below outweigh the impacts.” (Order, p. 76)

Given IID’s own EIR that provides for Salton Sea mitigation for 30 years, there is no evidence that impacts beyond 15 years are unavoidable and unmitigable. In fact, it was demonstrated that the transfer could be designed to avoid or fully mitigate impacts on the Salton Sea (through fallowing⁴ or through providing replacement water).

² In fact, the “projection” includes 2-3 years that are actually “historic” where data is available.

³ Impacts of the 15 year discontinuance on Sea restoration plans, air quality, birds, etc should be factors that are balanced against other water supply and economic factors.

⁴ There are some related technical mistakes in the Draft Order. On page 2, page 27, and page 31 the Draft Order indicates that fallowing has 1/3 of the impact of on-farm conservation. That is true with respect to direct fallowing. Testimony was provided concerning “ET” fallowing which would completely avoid reductions of inflow to the Sea (but require more acreage to meet water transfer obligations).

By deleting the finding, the Board better protects its own jurisdiction to modify the conditions, or discontinue the transfer, based on information that will be generated over the next 15 years.

Air quality impacts must be fully mitigated.

The Order notes that Imperial County is currently a federal non-attainment area for PM10 (as is the Coachella Valley). The Order finds that air quality impacts due to receding shoreline are: "complicated and uncertain". The Order requires that IID comply with the FEIR mitigation plan that includes studying and implementing feasible emission reduction measures as the Sea.

Nevertheless, the Order acknowledges that there may be significant, unmitigable air quality impacts, but finds that the public necessity of a transfer project overrides those impacts. It would appear that the Board believes that San Diego needs additional water more than Imperial and Coachella Valleys need healthy air.

The Authority cannot believe that this is the case. Air quality impacts are mitigable, as they will be during the first 15 years of the transfer project, and as demonstrated by the Owens Valley mitigation project. If necessary, San Diego has alternative sources of water, including reclaimed and desalinated water. The Imperial and Coachella Valleys have no alternative source of healthy air.

The Authority respectfully requests that the condition be modified, consistent with the approach taken elsewhere, to require that petitioners fully mitigate any air quality impacts attributable to the project that prejudice the ability of the Imperial and Coachella Valleys to meet federal clean air standards.

Water Quality

Among the many other overriding considerations, the State Board indicates that transferring water to the coast is more important than water quality degradation in the region (p. 34). The State Board acknowledges that there will be water quality degradation if the transfer is implemented with system and efficiency improvements. The State Board claims that it is not feasible as a part of this Order to prevent the proposed transfer from contributing to further violations of the water quality objective for selenium (p.34). This is inconsistent with p. 33: "To the extent that land is fallowed to meet this requirement [mitigation water], there will be no increase in salinity or selenium levels in IID's drains, the New River, the Alamo River, or the Salton Sea." Use of fallowing could mitigate and avoid the impacts. Consequently, there is no substantiation for the claim that the State Board cannot prevent such impacts when IID's own analysis shows the selenium impacts can be avoided or fully mitigated for at least thirty years.

Public Trust Doctrine

In its closing brief, the Audubon Society presents a cogent, well-documented analysis that the natural resources of the Salton Sea are protected by California's public trust doctrine. The Order fails to acknowledge or respond to that analysis.

The public trust doctrine preserves the people of Californians' important rights to continue to access and enjoy water-based natural resources. The Authority concurs with Audubon that the Sea's natural resources deserve the full protection accorded trust resources. At very least the Board owes the people of California a response regarding the Board's view of the people's right to have the vital natural resources of the Sea preserved for future generations.

Conclusion

At several places in the Order, the Board notes that the failure of the transfer project would jeopardize the Bay-Delta environment. The Authority sympathizes with Northern California's concern that the water needs of Southern California coastal metropolises not jeopardize the north's environmental resources. The Authority requests that the Board not sanction the sacrifices of the Desert's rich and abundant environmental resources and its air quality for that same purpose.

At the very least, the water transfer should be required to fully mitigate its impacts. To the extent that there is uncertainty regarding the magnitude of those impacts, and the feasibility of mitigating the impacts, prudence requires the Board err on the side of caution so that irretrievable and valuable resources are not unnecessarily lost, and the petitioners are encouraged to continue to pursue alternatives that are less detrimental to human and environmental values.

Sincerely,

[Original Signed]

Tom Kirk
Executive Director