

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN SENATE JUNE 2, 2003

SENATE BILL

No. 317

Introduced by Senator Kuehl

(Principal coauthors: Senators Ducheny and Machado)

(Principal coauthor: Assembly Member Kehoe)

(Coauthor: Senator Alpert)

(Coauthor: Assembly Member Vargas)

February 19, 2003

An act to amend Section 2081.7 of the Fish and Game Code, *and to amend Section 1013 of, and to add Section 1013.5 to, the Water Code, and to amend Sections 1 and 9 of Chapter 617 of the Statutes of 2002,* relating to the ~~Salton~~ Sea resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 317, as amended, Kuehl. ~~Salton Sea Resources.~~

(1) Existing law authorizes the Department of Fish and Game, contingent upon, among other things, *a determination by the Department of Fish and Game and the execution of a specified Quantification Settlement Agreement on or before December 31, 2003,* to authorize the take of species resulting from certain environmental impacts attributable to the implementation of the agreement.

This bill, for the purposes of that provision, would require that agreement be executed on or before ~~an unspecified date~~ *October 12, 2003, and would revise that contingency relating to a determination by that department.*

(2) Existing law requires the Secretary of the Resources Agency to use all available authority to enter into a memorandum of understanding, *with certain components, for the purposes of developing, selecting, and implementing alternatives for projects that realize specified objectives of the Salton Sea Reclamation Act.* Existing law requires the secretary, with respect to this memorandum, to establish an advisory committee ~~representing the parties interested in the future of the Salton Sea and specifies the composition of that committee.~~

This bill would ~~prescribe~~ *require the secretary to undertake a study relating to the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The bill would require the secretary to use all available authority to enter into a memorandum of understanding with the Secretary of the Interior to obtain federal participation in the restoration of the Salton Sea. The bill would revise the composition of that advisory committee.*

(3) Existing law requires that, for the purposes of evaluating the use of water by the Imperial Irrigation District during the term of the Quantification Settlement Agreement and for 6 years thereafter, it shall be conclusively presumed that any water conserved or used for mitigation purposes through land fallowing conservation measures has been conserved in the same amount as if conserved by efficiency improvements.

Existing law prohibits the forfeiture or impairment of a right to use water that is conserved in a described manner to carry out a transfer pursuant to the Quantification Settlement Agreement or to mitigate environmental impacts of that transfer. Existing law provides that during the period that the Quantification Settlement Agreement is in effect and the ~~district~~ *Imperial Irrigation District* is meeting its water delivery obligations under that agreement, if the Imperial Irrigation District uses land fallowing conservation measures that ensure compliance with certain criteria, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available.

Existing law makes the operation of these provisions subject to the execution of the Quantification Settlement Agreement on or before December 31, 2002.

This bill would make the operation of these provisions subject to the execution of that agreement on or before ~~an unspecified date.~~



~~(4) Existing law requires the Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with others, to review and report to the Governor and the Legislature, on or before June 30, 2003, regarding certain economic impacts arising from the implementation of the Quantification Settlement Agreement.~~

~~This bill would change the date on which the report is due to an unspecified date.~~

~~(5) October 12, 2003. The bill would provide that during the period in which the Quantification Settlement Agreement is in effect and the District Imperial Irrigation is meeting its water delivery obligations under that agreement and certain other water delivery obligations, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available. The bill, with certain exceptions, would subject any water transferred by the district to an ecosystem restoration fee during the initial term in which that agreement is in effect. The bill would authorize the Coachella Valley Water District, Imperial Irrigation District, and Metropolitan Water District of Southern California to enter into certain agreements relating to Colorado River water.~~

(4) Existing law establishes the Fish and Game Preservation Fund, a fund that is continuously appropriated to the department to carry out the Fish and Game Code.

By imposing new duties on the department, this bill would make an appropriation.

(5) *This bill would become operative only if SB 277 and SB 654 are both chaptered and become effective on or before January 1, 2004.*

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2081.7 of the Fish and Game Code is~~
2 *SECTION 1. Section 2081.7 of the Fish and Game Code is*
3 *amended to read:*
4 2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and
5 5515, and contingent upon the fulfillment of the conditions listed
6 in subdivisions (b), (c), and (d), the department may authorize,
7 under Chapter 1.5 (commencing with Section 2050) or Chapter 10
8 (commencing with Section 2800), the take of species resulting



1 from impacts attributable to the implementation of the
2 Quantification Settlement Agreement, as defined in subdivision
3 (a) of Section 1 of the act that added this section during the
4 2001–02 Regular Session, on all of the following:

5 (1) The salinity, elevation, shoreline habitat, or water quality of
6 the Salton Sea.

7 (2) The quantity and quality of water flowing in the
8 All-American Canal, the Coachella Canal, the Imperial Valley and
9 Coachella Valley drains, the New and Alamo Rivers, the Coachella
10 Valley Stormwater Channel, and the habitat sustained by those
11 flows.

12 (3) Agricultural lands in the Imperial Valley.

13 (4) The quantity and quality of water flowing in the Colorado
14 River, the habitat sustained by those flows, and the collection of
15 that water for delivery to authorized users.

16 (b) The Quantification Settlement Agreement is executed by
17 the appropriate parties on or before ~~December 31, 2002.~~

18 ~~(e) After consultation with the Department of Water Resources
19 and an opportunity for public review and comment, the
20 department determines, based on the best available science, that
21 the implementation of the Quantification Settlement Agreement
22 during the first 15 years that the agreement is in effect (1) will not
23 result in a material increase in projected salinity levels at the Salton
24 Sea, and (2) the agreement will not foreclose alternatives for
25 reclamation of the Salton Sea as summarized in Section
26 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L.
27 105-372). October 12, 2003.~~

28 (c) *The department has determined that the appropriate
29 agreements have been executed to address environmental impacts
30 at the Salton Sea that include enforceable commitments requiring
31 all of the following:*

32 (1) *Imperial Irrigation District to transfer 800,000 acre feet of
33 conserved water, by conservation methods selected by the Imperial
34 Irrigation District, to the Department of Water Resources on a
35 mutually agreed upon schedule in exchange for payment of one
36 hundred seventy-five dollars (\$175) per acre-foot. The price shall
37 be adjusted for inflation on an annual basis.*

38 (2) *Imperial Irrigation District to transfer up to 800,000
39 additional acre-feet of conserved water, by conservation methods
40 selected by the Imperial Irrigation District, to the Department of*



1 *Water Resources during the first 15 years of the Quantification*
2 *Settlement Agreement on the schedule established for the*
3 *mitigation water that was previously to be transferred to the San*
4 *Diego Water Authority, or on a mutually agreed upon schedule, at*
5 *no cost for the water in addition to the payment for the water from*
6 *the mitigation fund described in paragraph (1) of subdivision (b)*
7 *of Section 3 of Senate Bill 654 of the 2003-04 Regular Session.*

8 (3) *As a condition to acquisition of the water described in*
9 *paragraph (1), the Department of Water Resources shall be*
10 *responsible for any environmental impacts, including Salton Sea*
11 *salinity, related to use or transfer of that water. As a condition to*
12 *acquisition of the water described in paragraph (2), the*
13 *Department of Water Resources shall be responsible for*
14 *environmental impacts related to Salton Sea salinity that are*
15 *related to the use or transfer of that water.*

16 (4) *The Metropolitan Water District of Southern California*
17 *(MWD) to purchase up to 1.6 million acre-feet of the water*
18 *provided in accordance with paragraphs (1) and (2) from the*
19 *Department of Water Resources at a price of not less than two*
20 *hundred fifty dollars (\$250) per acre-foot on a mutually agreed*
21 *upon schedule. The price shall be adjusted for inflation on an*
22 *annual basis. The Department of Water Resources shall deposit all*
23 *proceeds from the sale of water pursuant to this paragraph, after*
24 *deducting costs and reasonable administrative expenses, into the*
25 *Salton Sea Restoration Fund.*

26 (5) *The Metropolitan Water District of Southern California to*
27 *pay not less than twenty dollars (\$20) per acre-foot for all special*
28 *surplus water received by MWD as a result of reinstatement of*
29 *access to that water under the Interim Surplus Guidelines by the*
30 *United States Department of Interior subtracting any water*
31 *delivered to Arizona as a result of a shortage. The money shall be*
32 *paid into the Salton Sea Restoration Fund. The price shall be*
33 *adjusted for inflation on an annual basis. Metropolitan Water*
34 *District of Southern California shall receive a credit against future*
35 *mitigation obligations under the Lower Colorado River*
36 *Multi-Species Conservation Plan for any funds provided under*
37 *this paragraph to the extent that those funds are spent on projects*
38 *that contribute to the conservation or mitigation for species*
39 *identified in the Lower Colorado River Multi-Species*



1 *Conservation Plan and that are consistent with the preferred*
2 *alternative for Salton Sea restoration.*

3 *(6) Coachella Valley Water District, Imperial Irrigation*
4 *District, and San Diego County Water Authority to pay a total of*
5 *thirty million dollars (\$30,000,000) to the Salton Sea Restoration*
6 *Fund as provided in paragraph (2) of subdivision (b) of Section 3*
7 *of Senate Bill 654 of the 2003-04 Regular Session.*

8 (d) All of the following conditions are met:

9 (1) The requirements of subdivision (b) and (c) of Section 2081
10 are satisfied as to the species for which take is authorized.

11 (2) The take authorization provides for the development and
12 implementation, in cooperation with federal and state agencies, of
13 an adaptive management process for monitoring the effectiveness
14 of, and adjusting as necessary, the measures to minimize and fully
15 mitigate the impacts of the authorized take. The adjusted measures
16 are subject to Section 2052.1.

17 (3) The take authorization provides for the development and
18 implementation in cooperation with state and federal agencies of
19 an adaptive management process that substantially contributes to
20 the long-term conservation of the species for which take is
21 authorized. Preparation of the adaptive management program and
22 implementation of the program is the responsibility of the
23 department. The department's obligation to prepare and
24 implement the adaptive management program is conditioned upon
25 the availability of funds pursuant to the Water Security, Clean
26 Drinking Water, Coastal and Beach Protection Act of 2002, if it is
27 approved by the voters at the statewide general election to be held
28 November 5, 2002 (Proposition 50), or other funds that may be
29 appropriated by the Legislature or approved by the voters for that
30 purpose. The failure to appropriate funds does not relieve the
31 applicant of the obligations of paragraphs (1) and (2). However,
32 the applicant shall not be required to fund any program pursuant
33 to this paragraph.

34 (4) The requirements of paragraph (1) may be satisfied if the
35 take is authorized under Chapter 10 (commencing with Section
36 2800).

37 (e) (1) The Secretary of the Resources Agency, *in*
38 *consultation with the department, the Department of Water*
39 *Resources, the Salton Sea Authority, appropriate air quality*
40 *districts, and the Salton Sea Advisory Committee, shall undertake*



1 a restoration study to determine a preferred alternative for the
2 restoration of the Salton Sea ecosystem and the protection of
3 wildlife dependent on that ecosystem. The restoration study shall
4 be conducted pursuant to a process with deadlines for release of
5 the report and programmatic environmental documents
6 established by the secretary, in consultation with the department,
7 the Department of Water Resources, the Salton Sea Authority, and
8 the Salton Sea Advisory Committee. The secretary shall use all
9 available authority to enter into a memorandum of understanding
10 (MOU) ~~between with the Secretary of the Interior, the Salton Sea~~
11 ~~Authority, and the Governor,~~ as provided in Section
12 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L.
13 105-372) for the purpose of ~~developing, selecting, and~~
14 ~~implementing alternatives for projects that realize the objectives~~
15 ~~of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of~~
16 ~~1998 (P.L. 105-372). The memorandum of understanding shall be~~
17 ~~consistent with the authority granted to the Secretary of the~~
18 ~~Interior under the Salton Sea Reclamation Act of 1998 (P.L.~~
19 ~~105-372). The memorandum of understanding, at a minimum,~~
20 *obtaining federal participation in the restoration of the Salton Sea.*

21 (2) *The restoration study shall establish all of the following:*

22 (A) ~~Criteria for evaluation and~~ *An evaluation of and suggested*
23 *criteria for the selection of alternatives that will allow for*
24 *consideration of a range of alternatives including, but not limited*
25 *to, an alternative designed to sustain avian biodiversity at the*
26 *Salton Sea, but not maintain elevation for the whole sea, an*
27 *alternative to maintain salinity at or below current conditions and*
28 *elevation near 230 feet below mean sea level under a variety of*
29 *inflow conditions, and a most cost-effective technical alternative.*

30 (B) ~~Criteria for determining~~ *An evaluation of the magnitude*
31 *and practicability of costs of construction, operation, and*
32 *maintenance of each alternative evaluated.*

33 (C) ~~A process, with established deadlines, for release of a~~
34 ~~report regarding the potential alternatives, the selection of a~~
35 ~~preferred alternative, including a proposed funding plan to~~
36 ~~implement the preferred alternative, to be analyzed pursuant to the~~
37 ~~National Environmental Policy Act and California Environmental~~
38 ~~Quality Act, the release of the draft environmental impact~~
39 ~~statement/environmental impact report (EIS/EIR) analyzing the~~
40 ~~alternatives, the release of the final EIR/EIS, and the issuance of~~



1 ~~a final alternatives report to Congress and the Legislature on or~~
2 ~~before January 1, 2007.~~

3 ~~(2) The Secretary of the Resources Agency shall establish an~~
4 ~~advisory committee representing the parties interested in the~~
5 ~~future of the Salton Sea. The Resources Agency shall consult with~~
6 ~~the advisory committee throughout all stages of the alternative~~
7 ~~selection process.~~

8 ~~(f) Subsequent to the issuance of the take authorization referred~~
9 ~~to in subdivision (a), the applicant shall be relieved of any~~
10 ~~condition included in the take authorization to satisfy division (e),~~
11 ~~upon fulfillment of either of the following conditions:~~

12 ~~(1) If the department finds that increases in salinity at the Salton~~
13 ~~Sea will no longer adversely affect piscivorous birds at the Salton~~
14 ~~Sea, the department may enter into an agreement with the Imperial~~
15 ~~Irrigation District that phases out the district's water or irrigation~~
16 ~~runoff to the Salton Sea.~~

17 ~~(2) The department makes a finding that a Salton Sea~~
18 ~~reclamation plan has been funded and implemented that eliminates~~
19 ~~the need for the Imperial Irrigation District to undertake measures~~
20 ~~that mitigate impacts to piscivorous birds at the Salton Sea.~~

21 ~~(g) A recommended plan for the use or transfer of water~~
22 ~~provided by paragraph (2) of subdivision (c). No water may be~~
23 ~~transferred pursuant to that subdivision unless the secretary finds~~
24 ~~that transfer is consistent with the preferred alternative for Salton~~
25 ~~Sea restoration.~~

26 ~~(D) The selection of a preferred alternative consistent with~~
27 ~~Section 2931, including a proposed funding plan to implement the~~
28 ~~preferred alternative.~~

29 ~~(3) The study identifying the preferred alternative shall be~~
30 ~~submitted to the Legislature on or before December 31, 2006.~~

31 ~~(4) The Secretary of the Resources Agency shall establish an~~
32 ~~advisory committee for purposes of this subdivision as follows:~~

33 ~~(A) The advisory committee shall be selected to provide~~
34 ~~balanced representation of the following interests:~~

35 ~~(i) Agriculture.~~

36 ~~(ii) Local governments.~~

37 ~~(iii) Conservation groups.~~

38 ~~(iv) Tribal interests.~~

39 ~~(v) Recreational users.~~

40 ~~(vi) Water agencies.~~



1 (B) *Appropriate federal agency representatives may be asked*
2 *to serve in an ex officio capacity.*

3 (C) *The Resources Agency shall consult with the advisory*
4 *committee throughout all stages of the alternative selection*
5 *process.*

6 (f) This section shall not be construed to exempt from any other
7 provision of law the Quantification Settlement Agreement and the
8 Agreement for Transfer of Conserved Water by and between the
9 Imperial Irrigation District and the San Diego County Water
10 Authority, dated April 29, 1998.

11 *SEC. 2. Section 1013 of the Water Code is amended to read:*

12 1013. (a) The Imperial Irrigation District, acting under a
13 contract with the United States for diversion and use of Colorado
14 River water or pursuant to the Constitution or to this chapter, or
15 complying with an order of the Secretary of the Interior, a court,
16 or the board, to reduce through conservation measures, the volume
17 of the flow of water directly or indirectly into the Salton Sea, shall
18 not be held liable for any effects to the Salton Sea or its bordering
19 area resulting from the conservation measures.

20 (b) For the purposes of this section, and during the term of the
21 Quantification Settlement Agreement as defined in subdivision (a)
22 of Section 1 of the act amending this section during the ~~2001–2002~~
23 *2001–02* Regular Session, “land fallowing conservation
24 measures” means the generation of water to be made available for
25 transfer or for environmental mitigation purposes by fallowing
26 land or removing land from agricultural production regardless of
27 whether the fallowing or removal from agricultural production is
28 temporary or long term, and regardless of whether it occurs in the
29 course of normal and customary agricultural production, if both of
30 the following apply:

31 (1) The measure is part of a land fallowing conservation plan
32 that includes mitigation provisions adopted by the Board of
33 Directors of the Imperial Irrigation District.

34 (2) Before the Imperial Irrigation District adopts a land
35 fallowing conservation plan, the district shall consult with the
36 Board of Supervisors of the County of Imperial and obtain the
37 board’s assessment of whether the proposed land fallowing
38 conservation plan includes adequate measures to avoid or mitigate
39 unreasonable economic or environmental impacts in the County of
40 Imperial.



1 (c) In order to minimize impacts on the environment, during
2 the term of the Quantification Settlement Agreement and for six
3 years thereafter, in any evaluation or assessment of the Imperial
4 Irrigation District's use of water, it shall be conclusively presumed
5 that any water conserved, or used for mitigation purposes, through
6 land fallowing conservation measures has been conserved in the
7 same volume as if conserved by efficiency improvements, such as
8 by reducing canal seepage, canal spills, or surface or subsurface
9 runoff from irrigation fields.

10 (d) If a party to the Quantification Settlement Agreement
11 engages in water efficiency conservation measures or land
12 fallowing conservation measures to carry out a Quantification
13 Settlement Agreement transfer or to mitigate the environmental
14 impacts of a Quantification Settlement Agreement transfer, there
15 may be no forfeiture, diminution, or impairment of the right of that
16 party to use of the water conserved.

17 (e) During the period that the Quantification Settlement
18 Agreement is in effect and the Imperial Irrigation District is
19 meeting its water delivery obligations under the Quantification
20 Settlement Agreement, ~~if the Imperial Irrigation District utilizes~~
21 ~~land fallowing conservation measures that ensure compliance with~~
22 ~~the criteria of subdivision (c) of Section 2081.7 of the Fish and~~
23 ~~Game Code for the environmental impacts of a water transfer to~~
24 ~~implement the Quantification Settlement Agreement and its water~~
25 ~~delivery obligations under subdivision (c) of Section 2081.7 of the~~
26 ~~Fish and Game Code~~, no person or local agency, as defined in
27 Section 21062 of the Public Resources Code, may seek to obtain
28 additional conserved Colorado River water from the district,
29 voluntarily or involuntarily, until the district has adopted a
30 resolution offering to make conserved Colorado River water
31 available.

32 (f) *During the initial term in which the Quantification*
33 *Settlement Agreement is in effect, any water transferred by the*
34 *Imperial Irrigation District shall be subject to an ecosystem*
35 *restoration fee established by the Department of Fish and Game,*
36 *in consultation with the board, to cover the proportional impacts*
37 *to the Salton Sea of the additional water transfer. The fee shall not*
38 *exceed 10 percent of the amount of any compensation received for*
39 *the transfer of the water. The fee shall be deposited in the Salton*



1 *Sea Restoration Fund. This fee shall not apply to the following*
2 *transfers:*

3 (1) *Transfers to meet water delivery obligations under the*
4 *Quantification Settlement Agreement and related agreements, as*
5 *defined in that agreement.*

6 (2) *Transfers to comply with subdivision (c) of Section 2081.7*
7 *of the Fish and Game Code.*

8 (3) *Transfers pursuant to a Defensive Transfer Agreement as*
9 *defined in the Agreement for Acquisition of Conserved Water*
10 *between the Imperial Irrigation District and the Metropolitan*
11 *Water District of Southern California.*

12 (g) *Subdivisions (c), (d), and (e) shall not become operative*
13 *unless the parties have executed the Quantification Settlement*
14 *Agreement on or before ~~December 31, 2002~~ October 12, 2003.*

15 ~~(g)~~

16 (h) *This section may not be construed to exempt the Imperial*
17 *Irrigation District from any requirement established under the*
18 *California Environmental Quality Act (Division 13 (commencing*
19 *with Section 21000) of the Public Resources Code).*

20 *SEC. 3. Section 1013.5 is added to the Water Code to read:*

21 *1013.5 The Coachella Valley Water District, Imperial*
22 *Irrigation District, and Metropolitan Water District of Southern*
23 *California may enter into Storage and Interstate Release*
24 *Agreements in accordance with Part 414 of Title 43 of the Code of*
25 *Federal Regulations. Nothing in this section shall be construed to*
26 *impair, affect, or diminish the rights of any water district under an*
27 *existing contract entered into under Section 5 of the Boulder*
28 *Canyon Project Act (43 U.S.C. Sec. 617d).*

29 *SEC. 4. This act shall only become operative if SB 277 and SB*
30 *654 of the 2003–04 Regular Session are both chaptered and*
31 *become effective on or before January 1, 2004.*

32 ~~amended to read:~~

33 ~~2081.7.—(a) Notwithstanding Sections 3511, 4700, 5050, and~~
34 ~~5515, and contingent upon the fulfillment of the conditions listed~~
35 ~~in subdivisions (b), (c), and (d), the department may authorize,~~
36 ~~under Chapter 1.5 (commencing with Section 2050) or Chapter 10~~
37 ~~(commencing with Section 2800), the take of species resulting~~
38 ~~from impacts attributable to the implementation of the~~
39 ~~Quantification Settlement Agreement, as defined in subdivision~~



- 1 ~~(a) of Section 1 of the act that added this section during the~~
2 ~~2001-02 Regular Session, on all of the following:~~
- 3 ~~(1) The salinity, elevation, shoreline habitat, or water quality of~~
4 ~~the Salton Sea.~~
- 5 ~~(2) The quantity and quality of water flowing in the~~
6 ~~All-American Canal, the Coachella Canal, the Imperial Valley and~~
7 ~~Coachella Valley drains, the New and Alamo Rivers, the Coachella~~
8 ~~Valley Stormwater Channel, and the habitat sustained by those~~
9 ~~flows.~~
- 10 ~~(3) Agricultural lands in the Imperial Valley.~~
- 11 ~~(4) The quantity and quality of water flowing in the Colorado~~
12 ~~River, the habitat sustained by those flows, and the collection of~~
13 ~~that water for delivery to authorized users.~~
- 14 ~~(b) The Quantification Settlement Agreement is executed by~~
15 ~~the appropriate parties on or before ____.~~
- 16 ~~(c) After consultation with the Department of Water Resources~~
17 ~~and an opportunity for public review and comment, the~~
18 ~~department determines, based on the best available science, that~~
19 ~~the implementation of the Quantification Settlement Agreement~~
20 ~~during the first 15 years that the agreement is in effect (1) will not~~
21 ~~result in a material increase in projected salinity levels at the Salton~~
22 ~~Sea, and (2) the agreement will not foreclose alternatives for~~
23 ~~reclamation of the Salton Sea as summarized in Section~~
24 ~~101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L.~~
25 ~~105-372).~~
- 26 ~~(d) All of the following conditions are met:~~
- 27 ~~(1) The requirements of subdivisions (b) and (c) of Section~~
28 ~~2081 are satisfied as to the species for which take is authorized.~~
- 29 ~~(2) The take authorization provides for the development and~~
30 ~~implementation, in cooperation with federal and state agencies, of~~
31 ~~an adaptive management process for monitoring the effectiveness~~
32 ~~of, and adjusting as necessary, the measures to minimize and fully~~
33 ~~mitigate the impacts of the authorized take. The adjusted measures~~
34 ~~are subject to Section 2052.1.~~
- 35 ~~(3) The take authorization provides for the development and~~
36 ~~implementation in cooperation with state and federal agencies of~~
37 ~~an adaptive management process that substantially contributes to~~
38 ~~the long-term conservation of the species for which take is~~
39 ~~authorized. Preparation of the adaptive management program and~~
40 ~~implementation of the program is the responsibility of the~~



1 department. The department's obligation to prepare and
2 implement the adaptive management program is conditioned upon
3 the availability of funds pursuant to the Water Security, Clean
4 Drinking Water, Coastal and Beach Protection Act of 2002, or
5 other funds that may be appropriated by the Legislature or
6 approved by the voters for that purpose. The failure to appropriate
7 funds does not relieve the applicant of the obligations of
8 paragraphs (1) and (2). However, the applicant shall not be
9 required to fund any program pursuant to this paragraph.

10 (4) The requirements of paragraph (1) may be satisfied if the
11 take is authorized under Chapter 10 (commencing with Section
12 2800).

13 (e) (1) The Secretary of the Resources Agency shall use all
14 available authority to enter into a memorandum of understanding
15 (MOU) between the Secretary of the Interior, the Salton Sea
16 Authority, and the Governor, as provided in Section
17 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L.
18 105-372) for the purpose of developing, selecting, and
19 implementing alternatives for projects that realize the objectives
20 of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of
21 1998 (P.L. 105-372). The memorandum of understanding shall be
22 consistent with the authority granted to the Secretary of the
23 Interior under the Salton Sea Reclamation Act of 1998 (P.L.
24 105-372). The memorandum of understanding, at a minimum,
25 shall establish all of the following:

26 (A) Criteria for evaluation and selection of alternatives that
27 will allow for consideration of a range of alternatives including,
28 but not limited to, an alternative designed to sustain avian
29 biodiversity at the Salton Sea, but not maintain elevation for the
30 whole sea, an alternative to maintain salinity at or below current
31 conditions and elevation near 230 feet below mean sea level under
32 a variety of inflow conditions, and a most cost-effective technical
33 alternative.

34 (B) Criteria for determining the magnitude and practicability
35 of costs of construction, operation, and maintenance of each
36 alternative evaluated.

37 (C) A process, with established deadlines, for release of a
38 report regarding the potential alternatives, the selection of a
39 preferred alternative, including a proposed funding plan to
40 implement the preferred alternative, to be analyzed pursuant to the



1 National Environmental Policy Act and California Environmental
2 Quality Act, the release of the draft environmental impact
3 statement/environmental impact report (EIS/EIR) analyzing the
4 alternatives, the release of the final EIS/EIR, and the issuance of
5 a final alternatives report to Congress and the Legislature on or
6 before January 1, 2007.

7 (2) The Secretary of the Resources Agency shall establish an
8 advisory committee as follows:

9 (A) The advisory committee shall be comprised of 11 persons.
10 Five shall represent affected local governments or affected water
11 or irrigation districts. Two shall represent the Salton Sea
12 Authority. Three shall represent regional or state conservation
13 groups with a demonstrated interest in the ecosystem of the Salton
14 Sea. One Native American shall represent tribal interests.

15 (B) Appropriate federal agency representatives may be asked
16 to serve in an ex officio capacity.

17 (C) Per diem for travel and lodging may be paid for up to five
18 advisory committee members, as determined by the secretary
19 based on equitable considerations.

20 (D) The Resources Agency shall consult with the advisory
21 committee throughout all stages of the alternative selection
22 process.

23 (f) Subsequent to the issuance of the take authorization referred
24 to in subdivision (a), the applicant shall be relieved of any
25 condition included in the take authorization to satisfy subdivision
26 (e), upon fulfillment of either of the following conditions:

27 (1) If the department finds that increases in salinity at the Salton
28 Sea will no longer adversely affect piscivorous birds at the Salton
29 Sea, the department may enter into an agreement with the Imperial
30 Irrigation District that phases out the district's water or irrigation
31 runoff to the Salton Sea.

32 (2) The department makes a finding that a Salton Sea
33 reclamation plan has been funded and implemented that eliminates
34 the need for the Imperial Irrigation District to undertake measures
35 that mitigate impacts to piscivorous birds at the Salton Sea.

36 (g) This section shall not be construed to exempt from any other
37 provision of law the Quantification Settlement Agreement and the
38 Agreement for Transfer of Conserved Water by and between the
39 Imperial Irrigation District and the San Diego County Water
40 Authority, dated April 29, 1998.



1 ~~SEC. 2.—Section 1013 of the Water Code is amended to read:~~

2 ~~1013.—(a) The Imperial Irrigation District, acting under a~~
3 ~~contract with the United States for diversion and use of Colorado~~
4 ~~River water or pursuant to the state Constitution or to this chapter,~~
5 ~~or complying with an order of the Secretary of the Interior, a court,~~
6 ~~or the board, to reduce through conservation measures, the volume~~
7 ~~of the flow of water directly or indirectly into the Salton Sea, shall~~
8 ~~not be held liable for any effects to the Salton Sea or its bordering~~
9 ~~area resulting from the conservation measures.~~

10 ~~(b) For the purposes of this section, and during the term of the~~
11 ~~Quantification Settlement Agreement as defined in subdivision (a)~~
12 ~~of Section 1 of the act amending this section during the 2001–2002~~
13 ~~Regular Session, “land fallowing conservation measures” means~~
14 ~~the generation of water to be made available for transfer or for~~
15 ~~environmental mitigation purposes by fallowing land or removing~~
16 ~~land from agricultural production regardless of whether the~~
17 ~~fallowing or removal from agricultural production is temporary or~~
18 ~~long term, and regardless of whether it occurs in the course of~~
19 ~~normal and customary agricultural production, if both of the~~
20 ~~following apply:~~

21 ~~(1) The measure is part of a land fallowing conservation plan~~
22 ~~that includes mitigation provisions adopted by the Board of~~
23 ~~Directors of the Imperial Irrigation District.~~

24 ~~(2) Before the Imperial Irrigation District adopts a land~~
25 ~~fallowing conservation plan, the district shall consult with the~~
26 ~~Board of Supervisors of the County of Imperial and obtain the~~
27 ~~board’s assessment of whether the proposed land fallowing~~
28 ~~conservation plan includes adequate measures to avoid or mitigate~~
29 ~~unreasonable economic or environmental impacts in the County of~~
30 ~~Imperial.~~

31 ~~(c) In order to minimize impacts on the environment, during~~
32 ~~the term of the Quantification Settlement Agreement and for six~~
33 ~~years thereafter, in any evaluation or assessment of the Imperial~~
34 ~~Irrigation District’s use of water, it shall be conclusively presumed~~
35 ~~that any water conserved, or used for mitigation purposes, through~~
36 ~~land fallowing conservation measures has been conserved in the~~
37 ~~same volume as if conserved by efficiency improvements, such as~~
38 ~~by reducing canal seepage, canal spills, or surface or subsurface~~
39 ~~runoff from irrigation fields.~~



1 ~~(d) If a party to the Quantification Settlement Agreement~~
2 ~~engages in water efficiency conservation measures or land~~
3 ~~fallowing conservation measures to carry out a Quantification~~
4 ~~Settlement Agreement transfer or to mitigate the environmental~~
5 ~~impacts of a Quantification Settlement Agreement transfer, there~~
6 ~~may be no forfeiture, diminution, or impairment of the right of that~~
7 ~~party to use of the water conserved.~~

8 ~~(e) During the period that the Quantification Settlement~~
9 ~~Agreement is in effect and the Imperial Irrigation District is~~
10 ~~meeting its water delivery obligations under the Quantification~~
11 ~~Settlement Agreement, if the Imperial Irrigation District utilizes~~
12 ~~land fallowing conservation measures that ensure compliance with~~
13 ~~the criteria of subdivision (c) of Section 2081.7 of the Fish and~~
14 ~~Game Code for the environmental impacts of a water transfer to~~
15 ~~implement the Quantification Settlement Agreement, no person or~~
16 ~~local agency, as defined in Section 21062 of the Public Resources~~
17 ~~Code, may seek to obtain additional conserved Colorado River~~
18 ~~water from the district, voluntarily or involuntarily, until the~~
19 ~~district has adopted a resolution offering to make conserved~~
20 ~~Colorado River water available.~~

21 ~~(f) Subdivisions (c), (d), and (e) shall not become operative~~
22 ~~unless the parties have executed the Quantification Settlement~~
23 ~~Agreement on or before _____.~~

24 ~~(g) This section may not be construed to exempt the Imperial~~
25 ~~Irrigation District from any requirement established under the~~
26 ~~California Environmental Quality Act (Division 13 (commencing~~
27 ~~with Section 21000) of the Public Resources Code).~~

28 ~~SEC. 3. Section 1 of Chapter 617 of the Statutes of 2002 is~~
29 ~~amended to read:~~

30 ~~Section 1. (a) “Quantification Settlement Agreement”~~
31 ~~means the agreement, the provisions of which are substantially~~
32 ~~described in the draft Quantification Settlement Agreement~~
33 ~~(QSA), dated December 12, 2000, and submitted for public review~~
34 ~~by the Quantification Settlement Agreement parties, and as it may~~
35 ~~be amended, and that shall include as a necessary component the~~
36 ~~implementation of the Agreement for Transfer of Conserved~~
37 ~~Water by and between the Imperial Irrigation District and the San~~
38 ~~Diego County Water Authority, dated April 29, 1998,~~
39 ~~(HD/SDCWA Transfer Agreement), and as it may be amended,~~
40 ~~and any QSA-related program that delivers water at the intake of~~



1 ~~the Metropolitan Water District of Southern California's Colorado~~
2 ~~River Aqueduct.~~

3 ~~(b) It is the intent of the Legislature to allocate fifty million~~
4 ~~dollars (\$50,000,000) from funds available pursuant to the Water~~
5 ~~Security, Clean Drinking Water, Coastal and Beach Protection Act~~
6 ~~of 2002, as a minimum state contribution or matching contribution~~
7 ~~for federal funds or funds obtained from other sources, to assist in~~
8 ~~the implementation of the preferred alternative or other related~~
9 ~~restoration activities, including the program referred to in~~
10 ~~paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and~~
11 ~~Game Code, at the Salton Sea or the lower Colorado River, or to~~
12 ~~assist in the development of a natural community conservation~~
13 ~~plan that is consistent with the initiative and that is implemented~~
14 ~~to effectuate the QSA.~~

15 ~~(c) The Legislature finds that it is important to the state to meet~~
16 ~~its commitment to reduce its use of water from the Colorado River~~
17 ~~to 4.4 million acre-feet per year. The Legislature further finds that~~
18 ~~it is important that actions taken to reduce California's Colorado~~
19 ~~River water use are consistent with its commitment to restore the~~
20 ~~Salton Sea, which is an important resource for the state. The~~
21 ~~Legislature further finds that species previously designated as~~
22 ~~fully protected may be taken during activities intended to meet the~~
23 ~~state's commitment to reduce its use of Colorado River water as~~
24 ~~long as those activities are found to comply with existing law,~~
25 ~~including Chapter 1.5 (commencing with Section 2050) of~~
26 ~~Division 3 of the Fish and Game Code.~~

27 ~~(d) California's Colorado River Water Use Plan is a framework~~
28 ~~developed to allow California to meet its Colorado River needs~~
29 ~~from within its basic annual apportionment. California will be~~
30 ~~required to reduce the amount of Colorado River water it uses by~~
31 ~~up to 800,000 acre-feet per year.~~

32 ~~(e) California's basic apportionment of Colorado River water~~
33 ~~is 4.4 million acre-feet per year, but until recently, due to the~~
34 ~~availability of surplus river water and apportioned but unused~~
35 ~~water of Nevada and Arizona, California has used up to 5.2 million~~
36 ~~acre-feet per year over the past ten years. About 700,000 acre-feet~~
37 ~~of this additional water has been used to fill the Colorado River~~
38 ~~Aqueduct, which transports water to the southern California urban~~
39 ~~coast. Nevada and Arizona are now using, or are close to using,~~



1 their full apportionments, and California can no longer rely on that
2 surplus of water.

3 ~~(f) The Salton Sea will eventually become too saline to support
4 its fishery and fish-eating birds unless a restoration plan is adopted
5 and implemented. The transfer of water from the Imperial
6 Irrigation District to the San Diego County Water Authority and
7 the other Quantification Settlement Agreement (QSA) parties
8 pursuant to the QSA could result in an acceleration of the rate of
9 salinization of the Salton Sea.~~

10 ~~(g) Restoration of the Salton Sea is in the state and national
11 interest. Congress recognized in the Salton Sea Reclamation Act
12 of 1998, Public Law 105-372, that appropriate federal agencies
13 should offer alternative restoration options to Congress and the
14 public in order to avoid further deterioration of the internationally
15 significant habitat and wildlife values of the Salton Sea and to
16 protect the wide array of economic and social values that exist in
17 the immediate vicinity of the Salton Sea. The failure to issue that
18 report in a timely fashion has unnecessarily constrained the
19 Legislature's ability to consider fully the costs and benefits of
20 various options to restoration that should be undertaken at the
21 Salton Sea.~~

22 ~~SEC. 4. Section 9 of Chapter 617 of the Statutes of 2002 is
23 amended to read:~~

24 ~~Sec. 9. (a) The Resources Agency and the Technology,
25 Trade, and Commerce Agency, in consultation with the Imperial
26 Irrigation District, Imperial County, and any other entities,
27 organizations, and individuals deemed appropriate by the
28 secretaries of those two agencies, shall review and report to the
29 Governor and the Legislature, on or before _____, on all of the
30 following:~~

31 ~~(1) The expected nature and extent of any economic impacts
32 related to the use of land following in the Imperial Valley in
33 connection with the Quantification Settlement Agreement, as
34 defined in subdivision (a) of Section 1.~~

35 ~~(2) Measures taken by the Imperial Irrigation District in
36 formulating a fallowing program to minimize as far as practicable
37 those economic impacts.~~

38 ~~(3) Whether and to what extent funds provided to the Imperial
39 Irrigation District for transferred water under the Quantification
40 Settlement Agreement, together with any other funds that have~~



1 ~~been made available for these purposes, would mitigate those~~
2 ~~economic impacts.~~

3 ~~(4) The amount of any additional funds required to mitigate the~~
4 ~~economic impacts.~~

5 ~~(b) If the report required under this section indicates that~~
6 ~~additional funds are required, the report shall include~~
7 ~~recommendations to the Governor and the Legislature on all of the~~
8 ~~following:~~

9 ~~(1) Proposed means for providing those additional funds,~~
10 ~~including, but not limited to, funding by the state.~~

11 ~~(2) Formulation of a program to administer those funds in the~~
12 ~~most effective manner. The program shall be developed in~~
13 ~~consultation with the Department of Finance, Department of Food~~
14 ~~and Agriculture, and Department of Water Resources, the Imperial~~
15 ~~Irrigation District, and any other entities deemed appropriate by~~
16 ~~the secretaries of the two agencies.~~

