
Introduced by Senator Ducheny

February 21, 2003

An act to amend Section 2081.7 of the Fish and Game Code, relating to endangered species.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as introduced, Ducheny. Endangered species: Salton Sea.

Existing law requires the Secretary of the Resources Agency to enter into a memorandum of understanding (MOU) between the Secretary of the Interior, the Salton Sea Authority, and the Governor, for the purpose of developing, selecting, and implementing alternatives for projects that realize the objectives of the Salton Sea Reclamation Act of 1998. The MOU is required to establish, among other things, a process for release of a final report on those alternatives, including a proposed funding plan, to Congress and the Legislature on or before January 1, 2007.

This bill would change the date of that final report to January 1, 2005.

Vote: majority. Appropriation: no. 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 amended to read:
3 2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and
4 5515, and contingent upon the fulfillment of the conditions listed
5 in subdivisions (b), (c), and (d), the department may authorize,
6 under Chapter 1.5 (commencing with Section 2050) or Chapter 10
7 (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 (c) 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~~ *do either of the following:*

24 (1) *Result* in a material increase in projected salinity levels at
25 the Salton Sea, ~~and (2) the agreement will not foreclose.~~

26 (2) *Foreclose* alternatives for reclamation of the Salton Sea as
27 summarized in Section 101(b)(1)(A) of the Salton Sea
28 Reclamation Act of 1998 (P.L. 105-372).

29 (d) All of the following conditions ~~are~~ *shall be* met:

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

32 (2) The take authorization provides for the development and
33 implementation, in cooperation with federal and state agencies, of
34 an adaptive management process for monitoring the effectiveness
35 of, and adjusting as necessary, the measures to minimize and fully
36 mitigate the impacts of the authorized take. The adjusted measures
37 are subject to Section 2052.1.

38 (3) The take authorization provides for the development and
39 implementation in cooperation with state and federal agencies of
40 an adaptive management process that substantially contributes to



1 the long-term conservation of the species for which take is
2 authorized. Preparation of the adaptive management program and
3 implementation of the program is the responsibility of the
4 department. The department's obligation to prepare and
5 implement the adaptive management program is conditioned upon
6 the availability of funds pursuant to the Water Security, Clean
7 Drinking Water, Coastal and Beach Protection Act of 2002, ~~if it is~~
8 ~~approved by the voters at the statewide general election to be held~~
9 ~~November 5, 2002 (Proposition 50) Division 26.5 (commencing~~
10 ~~with Section 79500) of the Water Code, or other funds that may be~~
11 appropriated by the Legislature or approved by the voters for that
12 purpose. The failure to appropriate funds does not relieve the
13 applicant of the obligations of paragraphs (1) and (2). However,
14 the applicant shall not be required to fund any program pursuant
15 to this paragraph.

16 (4) The requirements of paragraph (1) may be satisfied if the
17 take is authorized under Chapter 10 (commencing with Section
18 2800).

19 (e) (1) The Secretary of the Resources Agency shall use all
20 available authority to enter into a memorandum of understanding
21 (MOU) between the Secretary of the Interior, the Salton Sea
22 Authority, and the Governor, as provided in Section
23 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L.
24 105-372) for the purpose of developing, selecting, and
25 implementing alternatives for projects that realize the objectives
26 of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of
27 1998 (P.L. 105-372). The memorandum of understanding shall be
28 consistent with the authority granted to the Secretary of the
29 Interior under the Salton Sea Reclamation Act of 1998 (P.L.
30 105-372). The memorandum of understanding, at a minimum,
31 shall establish all of the following:

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



1 (B) Criteria for determining the magnitude and practicability
2 of costs of construction, operation, and maintenance of each
3 alternative evaluated.

4 (C) A process, with established deadlines, for release of a
5 report regarding the potential alternatives, the selection of a
6 preferred alternative, including a proposed funding plan to
7 implement the preferred alternative, to be analyzed pursuant to the
8 National Environmental Policy Act and California Environmental
9 Quality Act, the release of the draft environmental impact
10 statement/environmental impact report (EIS/EIR) analyzing the
11 alternatives, the release of the final EIR/EIS, and the issuance of
12 a final alternatives report to Congress and the Legislature on or
13 before January 1, ~~2007~~ 2005.

14 (2) The Secretary of the Resources Agency shall establish an
15 advisory committee representing the parties interested in the
16 future of the Salton Sea. The Resources Agency shall consult with
17 the advisory committee throughout all stages of the alternative
18 selection process.

19 (f) Subsequent to the issuance of the take authorization referred
20 to in subdivision (a), the applicant shall be relieved of any
21 condition included in the take authorization to satisfy division (c),
22 upon fulfillment of either of the following conditions:

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

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

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

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