

Senate Bill No. 1214

CHAPTER 614

An act to amend Sections 2081.7 and 2931 of, and to add Sections 2081.8 and 2932.5 to, the Fish and Game Code, relating to wildlife, and making an appropriation therefor.

[Approved by Governor September 21, 2004. Filed
with Secretary of State September 21, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1214, Kuehl. Salton Sea Restoration: restoration study.

(1) Existing law enacts the Salton Sea Restoration Act. Existing law requires the Secretary of the Resources Agency, in consultation with the Department of Fish and Game, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem. Existing law requires that the study establish an evaluation of, and suggested criteria for, a selection of alternatives that will allow for consideration of a range of alternatives, including, but not limited to, an alternative designed to sustain avian biodiversity at the Salton Sea, but not maintain elevation for the whole sea, an alternative to maintain salinity at or below current conditions and elevation near 230 feet below mean sea level under a variety of inflow conditions, and a most cost-effective technical alternative. The bill would require the Secretary of the Resources Agency to extend an invitation to the United States Geological Survey Salton Sea Science Office to participate in the restoration study.

This bill would recast the required evaluation to require that the study establish an evaluation of alternatives for the restoration of the Salton Sea that includes consideration of strategies for salinity control, habitation creation and restoration, and different shoreline elevations and surface area configurations. The bill would require the evaluation to include suggested criteria for selecting and evaluating alternatives consistent with the Salton Sea Restoration Act and would require the evaluation to include, but not be limited to, at least one most cost-effective, technically feasible, alternative.

(2) Existing law requires the Secretary of the Resources Agency to establish an advisory committee for the purposes of the restoration study, and requires that committee to be selected to provide balanced



representation of the interests of specified governmental and user groups.

This bill would require that the restoration study advisory committee to be selected additionally provide representation of the interests of geothermal energy development.

This bill would impose various requirements related to the organization, conduct of meetings, and responsibilities of the advisory committee.

The bill would require the Resources Agency to periodically provide an update to the advisory committee of the current work plan and schedule for the development of the restoration plan.

The bill would also require the Resources Agency to undertake the necessary activities to assess the protection of recreational opportunities, and the creation of opportunities for improved local economic conditions, surrounding the Salton Sea, except as specified.

(3) Existing law declares 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 that ecosystem based on the preferred alternative developed as a result of, among other things, the restoration study, and that the preferred alternative from that restoration study provide the maximum feasible attainment of various specified objectives.

This bill would additionally declare the intent of the Legislature that the restoration plan include, to the extent consistent with fish and wildlife restoration objectives, the protection of recreational opportunities and the creation of opportunities for improved local economic conditions.

The bill would, for the purposes of the restoration plan, define the Salton Sea ecosystem to include, but not be limited to, the Salton Sea, the agricultural lands surrounding that sea, and the tributaries and drains within the Imperial and Coachella Valleys that deliver water to the Salton Sea.

(4) Existing law establishes the Salton Sea Restoration Fund, and makes the moneys in the fund available, upon appropriation by the Legislature, for environmental and engineering studies related to the restoration of the Salton Sea, implementation of conservation measures necessary for the fish and wildlife dependent upon it, implementation of the preferred Salton Sea restoration alternative, and administrative, technical, and public outreach costs related to the restoration alternative.

This bill would prohibit the moneys in the fund from being expended for mitigation except mitigation undertaken by the State of California.



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

SECTION 1. Section 2081.7 of the Fish and Game Code is amended to read:

2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and contingent upon the fulfillment of the conditions listed in subdivisions (b), (c), and (d), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species resulting from impacts attributable to the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, on all of the following:

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

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

(3) Agricultural lands in the Imperial Valley.

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

(b) The Quantification Settlement Agreement is executed by the appropriate parties on or before October 12, 2003.

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

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

(2) Imperial Irrigation District to transfer up to 800,000 additional acre-feet of conserved water, by conservation methods selected by the Imperial Irrigation District, to the Department of Water Resources during the first 15 years of the Quantification Settlement Agreement on the schedule established for the mitigation water that was previously to be transferred to the San Diego Water Authority, or on a mutually agreed-upon schedule, at no cost for the water in addition to the payment for the water from the mitigation fund described in paragraph (1) of subdivision (b) of Section 3 of Chapter 613 of the Statutes of 2003.



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

(4) The Metropolitan Water District of Southern California (MWD) to purchase up to 1.6 million acre-feet of the water provided in accordance with paragraphs (1) and (2) from the Department of Water Resources at a price of not less than two hundred fifty dollars (\$250) per acre-foot on a mutually agreed-upon schedule. The price shall be adjusted for inflation on an annual basis. The Department of Water Resources shall deposit all proceeds from the sale of water pursuant to this paragraph, after deducting costs and reasonable administrative expenses, into the Salton Sea Restoration Fund established in Section 2932.

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

(6) Coachella Valley Water District, Imperial Irrigation District, and San Diego County Water Authority to pay a total of thirty million dollars (\$30,000,000) to the Salton Sea Restoration Fund as provided in paragraph (2) of subdivision (b) of Section 3 of Chapter 613 of the Statutes of 2003.

(d) All of the following conditions are met:

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

(2) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the



impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

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

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

(e) (1) The Secretary of the Resources Agency, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, shall undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The Secretary of the Resources Agency shall extend an invitation to the United States Geological Survey Salton Sea Science Office to also participate in the restoration study, and the office may participate if it accepts the invitation. The restoration study shall be conducted pursuant to a process with deadlines for release of the report and programmatic environmental documents established by the secretary, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, and the Salton Sea Advisory Committee, and the United States Geological Survey Salton Sea Science Office, if it is a participant. The secretary shall use all available authority to enter into a memorandum of understanding (MOU) with the Secretary of the Interior, as provided in Section 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372) for the purpose of obtaining federal participation in the restoration of the Salton Sea.

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

(A) An evaluation of alternatives for the restoration of the Salton Sea that includes consideration of strategies for salinity control, habitation creation and restoration, and different shoreline elevations and surface



area configurations. The alternatives shall consider the range of possible inflow conditions. The evaluation established pursuant to this subparagraph shall also include suggested criteria for selecting and evaluating alternatives consistent with Chapter 13 (commencing with Section 2930), including, but not limited to, at least one most cost-effective, technically feasible, alternative.

(B) An evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative evaluated.

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

(D) The selection of a preferred alternative consistent with Section 2931, including a proposed funding plan to implement the preferred alternative. The proposed funding plan shall include a determination of the moneys that are, or may be, available to construct and operate the preferred project, including, but not limited to, all of the following moneys:

(i) Moneys in the Salton Sea Restoration Fund established by Section 2932.

(ii) State water and environmental bond moneys.

(iii) Federal authorizations and appropriations.

(iv) Moneys available through a Salton Sea Infrastructure Financing District established pursuant to Section 53395.9 of the Government Code and local assessments by the Salton Sea Authority or its member agencies.

(v) Moneys derived from user or other fees.

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

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

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

(i) Agriculture.

(ii) Local governments.

(iii) Conservation groups.

(iv) Tribal governments.

(v) Recreational users.

(vi) Water agencies.

(vii) Air pollution control districts.

(viii) Geothermal energy development.

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



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

(D) The advisory committee shall meet no fewer than six times annually.

(E) The secretary shall appoint a vice chair of the advisory committee from the committee membership. The vice chair shall work with the secretary to develop advisory committee agendas and to schedule meetings of the committee. The secretary and vice chair shall appoint an agenda subcommittee to assist in the preparation of advisory committee agendas.

(F) The advisory committee shall submit to the Resources Agency recommendations to assist the agency in preparation of its restoration plan. The Resources Agency shall develop a schedule for the completion of these recommendations to ensure that these recommendations will be considered by the agency in a timely and meaningful manner as the restoration plan is developed. These recommendations may include, but are not limited to:

(i) The specific goals and objectives of the restoration plan.

(ii) The range of alternative restoration actions that must be developed and analyzed.

(iii) The no action alternative.

(iv) The criteria for determining economic and technical feasibility of the alternatives.

(v) The range of options for funding the restoration plan.

(vi) The selection of a preferred alternative for a restoration plan.

(G) The Resources Agency shall periodically provide an update to the advisory committee of the current work plan and schedule for the development of the restoration plan.

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

SEC. 2. Section 2081.8 is added to the Fish and Game Code, to read:

2081.8. The Resources Agency shall undertake the necessary activities to assess the protection of recreational opportunities, including, but not limited to, hunting, fishing, boating, and birdwatching, and the creation of opportunities for improved local economic conditions, surrounding the Salton Sea. The Resources Agency shall not undertake any of those activities if the agency determines they would constitute a project purpose for environmental documentation that is prepared pursuant to Section 2081.7.



SEC. 3. Section 2931 of the Fish and Game Code is amended to read:

2931. (a) 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 that ecosystem.

(b) This restoration shall be based on the preferred alternative developed as a result of the restoration study and alternative selection process described in Section 2081.7 and using the funds made available in accordance with that section to be deposited in the Salton Sea Restoration Fund and other funds made available by the Legislature and the federal government.

(c) The preferred alternative shall provide the maximum feasible attainment of the following objectives:

(1) Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife that depend on the Salton Sea.

(2) Elimination of air quality impacts from the restoration projects.

(3) Protection of water quality.

(d) For the purpose of the restoration plan, the Salton Sea ecosystem shall include, but is not limited to, the Salton Sea, the agricultural lands surrounding the Salton Sea, and the tributaries and drains within the Imperial and Coachella Valleys that deliver water to the Salton Sea.

SEC. 4. Section 2932.5 is added to the Fish and Game Code, to read:

2932.5. Moneys deposited in the fund created pursuant to Section 2932 shall not be expended for mitigation except for mitigation undertaken by the State of California.

