ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Friday, February 22, 2013, 1-4pm
North Shore Community Center
99-155 Sea View Drive, Mecca, California

INFORMATIONAL AND OVERSIGHT HEARING:

THE SALTON SEA: CURRENT EFFORTS AND FUTURE OPPORTUNITIES

BACKGROUND

Natural and Social History

The Salton Sea, California's largest lake, is located in a low-lying trough or desert sink, much of which is below sea level, in Riverside and Imperial Counties. From prehistoric times through the 1800s, the sea bed has periodically filled and receded numerous times. Archaeologists trace human activity in the area back approximately 10,000 years. At least nine distinct Native American occupied the basin prior to Spanish and Mexican exploration. In time, rail transportation, salt mining, and irrigated agriculture operations were established in the basin.

The current Salton Sea was formed in 1905 when the Colorado River flooded its banks at a faulty irrigation diversion site. The California Development Company had undertaken a project to divert water from the Colorado River to the Salton Sea's then-dry lake bed. As irrigated agriculture in the region grew rapidly, the Company struggled to keep up with demand. Silt and heavy sediment began to clog the irrigation project's channels and ditches. The Company responded by making a new 60-foot cut in the river bank. However, a series of floods in 1905 rushed through this new cut, washed out the canals, and flooded the valley for the next 18 months. Floodwaters eroded the courses of the New and Alamo Rivers and submerged the town of Salton, the lands of the Torres Martinez Desert Cahuilla Indian Tribe, and tracks of the Southern Pacific Railroad. In 1907, the Colorado River was controlled and diverted back into its previous course to the Gulf of California, but the 400-square-mile Salton Sea remained.

Following the stemming of the floods, agricultural return flows, which today comprise much of the Alamo and New Rivers, sustained the volume of the Salton Sea. In the mid-20th Century, the Salton Sea's amenities, including hotels, restaurants, boating, water skiing, and fishing, made it a Southern California vacation destination, until two tropical storms hit in the 1970s. The surrounding communities' once-booming economies have declined in parallel with the Sea. The Imperial Valley and Coachella Valley continue to support a robust agricultural industry, but, as a result of local irrigation districts' water conservation measures and transfer agreements with metropolitan areas (discussed further below), inflows to the Salton Sea will likely continue to decline.

With the decline in inflows, fishery resources in the sea have also declined significantly as a result of increasing salinity, evaporation, and poor water quality. The agricultural return flows that sustained the Salton Sea also contributed high levels of salts, nitrogen, phosphorus, and other inputs that negatively affect water quality, especially in combination with the high evaporation rates in the Colorado Desert. Three problems in particular pose significant threats to environmental and public health. First, the Salton Sea is now estimated to be at least 25% saltier than the ocean. The Sea's salinity level, which is projected to increase steadily, poses a threat to the survival of fish and wildlife.

Second, agricultural nutrient loading, in combination with biological processes and periodic inversion layers, results in eutrophic conditions within the Salton Sea. Feeding on the readily available nutrients, algae blooms proliferate in the Sea. When algae and other aquatic plants die, they drop to the bottom of the Sea and are decomposed by anaerobic bacteria. This decomposition process removes dissolved oxygen from the water and produces large amounts of odorous gases such as ammonia and hydrogen sulfide. A familiar smell to visitors and nearby residents, the periodic buildup and upwelling of these gases has contributed to massive fish and bird die-off events. In September of 2012, a storm event reportedly spread the putrid smell as far as Los Angeles' San Fernando Valley, 150 miles away.

Additionally, as the Salton Sea continues to shrink due to reduced inflows and evaporation, the newly exposed land produces a fine dust containing concentrated amounts of natural and agricultural pollutants. This dust poses an increasing public health problem for a region that already experiences disproportionately high levels of asthma and other respiratory diseases. The dust may also harm the region's agricultural operations.

Today the Salton Sea is one of the most important wetland areas in California for migratory waterfowl and shorebirds, since over 95% of California's natural historical wetlands have been converted to other land uses. The Salton Sea supports over 400 species of birds and is an internationally significant stopover for hundreds of thousands of birds migrating along the Pacific flyway. It is generally recognized that without restoration efforts the ecosystem of the Salton Sea will collapse over the next decade or two. With renewed public and legislative attention on the Salton Sea, the Committee has convened to investigate the social, economic, and environmental implications of the Salton Sea's decline, and to explore potential solutions and feasible next steps.

Litigation - Past and Present

The Salton Sea continues to be shaped through natural processes, as well as government and stakeholder actions at the transnational, interstate, and intrastate levels.

In 1922, the states in the Colorado River basin – Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, and California – entered into the Colorado River Compact, which governed the allocation of water rights from the basin among the states. In 1944, the United States entered into agreements with Mexico similarly recognizing the nations' respective allocations of Colorado River water. In the 1963 case *Arizona v. California*, 373 U.S. 546, the Supreme Court

of the United States resolved and quantified the water rights claims of states under the compact. California was afforded 4.4 million acre-feet during normal years, although it used much more that this amount until Arizona and Nevada further developed their shares. The Imperial Irrigation District (IID) and Coachella Valley Water District (CVWD) diverted water from the Colorado River first via the Alamo Canal, which ran primarily through Mexico, and then via the All-American Canal beginning in the 1930s. Agricultural return flows have, as noted above, sustained the Salton Sea. However, due to the growing needs of neighboring states and of metropolitan Southern California, as well as a 1984 order from the State Water Resources Control Board, IID has improved its water conservation practices and pursued water transfers. These actions significantly reduce inflows to the Salton Sea.

In 2003, IID entered into a series of agreements to transfer its conserved water to the Metropolitan Water District of Southern California (MWD) and the San Diego County Water Authority (SDCWA). Legal disputes over the transfer agreements led to the Quantification Settlement Agreement (QSA), which refers to a collection of agreements among IID, CVWD, MWD, and SDCWA, as well as related agreements with the State of California, representatives of the United States, and other water districts and entities. The QSA included approval of an agricultural-to-urban water transfer of unprecedented scope. The QSA also settled a number of claims to the Colorado River and provided a transition period for the state to reduce its consumption of the Colorado River to its allotted 4.4 million acre feet entitlement. As noted above, under the QSA, the amount of water flowing into the Salton Sea is being reduced over time, and will be significantly reduced once the water transfers are fully implemented in 2017, if not sooner. Recently, IID and SDCWA filed a joint change petition with the State Water Resources Control Board to halt IID's interim water deliveries to the Salton Sea beginning in 2014. IID instead proposes to use revenues from an accelerated water transfer towards other forms of mitigation, such as habitat creation and dust control measures.

The QSA has been subject to a number of judicial challenges based upon alleged violations of state and federal law. The most prominent legal issue had been whether the State Executive Branch, by signing onto the QSA, created an unconditional, enforceable monetary obligation in violation of the California Constitution. The trial court held that it had. In December of 2011, California's Third District Court of Appeal reversed and held that although the State is contractually obligated to pay excess mitigation costs associated with the QSA, the agreement does not give the other QSA parties "or anyone else" the right to enforce the obligation by taking money out of the Treasury. Rather, it is solely up to the Legislature to appropriate such funds. The California Supreme Court has denied all appeals for review, but QSA litigation continues on remanded or unadjudicated issues, including claims based upon the Brown Act and the California Environmental Quality Act. At the federal level, the U.S. District Court for the Southern District of California has dismissed legal challenges to the QSA based upon the Clean Air Act and National Environmental Policy Act. Imperial County and the Imperial County Air Pollution Control District have indicated that they plan to appeal to the Ninth Circuit Court of Appeals.

State Legislative and Administrative Response

The State of California has incurred legal obligations with regard to the Salton Sea that arise in part out of its role in the 2003 QSA, historic agreements regarding allocation from the Colorado River, and laws requiring protection of air and water quality, wetlands preservation, and endangered species. The California State Natural Resources Agency (Natural Resources Agency) reported in its 2009 Environmental Impact Report (EIR) that even taking no action toward the Salton Sea would cost the state over $1 billion. According to a report by the Pacific Institute, failure to restore the Salton Sea could result in exorbitant costs to human and ecological health, and possibly to agricultural production. The state would also incur increased liability and litigation costs. Thus, the appropriate question is arguably not whether to restore the Salton Sea, but how and to what extent, and how to fund such restoration.

The Salton Sea has been the subject of a number of legislative efforts over the past decade. In 2003, the Legislature approved a package of bills (SB 277 (Ducheny), SB 317 (Kuehl), SB 654 (Machado), SB 1214 (Kuehl)) facilitating the implementation of the QSA and calling for restoration of the Salton Sea. Among other things, the 2003 legislative package directed the Department of Water Resources, in consultation with a new Salton Sea Advisory Committee and with the Salton Sea Authority, a state-chartered joint powers authority, to prepare an ecosystem restoration study and associated programmatic environmental documentation.

The agencies released the Salton Sea Ecosystem Restoration Program's plan and programmatic environmental impact report in 2009. The estimated cost of the proposed restoration plan was over $8 billion. So far, several million dollars in bond funds have been expended on limited habitat restoration projects. However, the plan lacks a long-term funding strategy and has never been adopted by the Legislature.

In 2008, SB 1256 (Ducheny) proposed the creation of the Salton Sea Restoration Council as a sub-agency of the Natural Resources Agency. The Council was to serve as the primary state authority for implementation of the state's Salton Sea restoration plan. SB 1256 was not approved by the Senate Appropriations Committee. Two years later, SB 51 (Ducheny) succeeded in creating the Salton Sea Restoration Council as a state agency to oversee restoration efforts. However, the Governor's reorganization plan, as amended by the budget trailer bill SB 1018, in 2012 repealed the Council before it ever actually met.

Legislation introduced in 2012 – AB 939 and AB 1410 (V. Manuel Pérez) – proposed to shift authority for restoration decisions from the state to the Salton Sea Authority. However, those bills were held in the Senate Appropriations Committee and the Senate Rules Committee, respectively. The Senate Appropriations Committee in particular expressed concerns that while the bills would shift authority to the locals, fiscal responsibility for the costs of restoration would remain with the state.

Also in 2012, the Legislature appropriated $2 million from the Salton Sea Restoration Fund to pay for a restoration funding and feasibility study. However, the Governor used his line-item veto power to veto that appropriation. The Governor in his veto message though instructed the Department of Fish and Wildlife to work with stakeholders on other options for such a study.

2013-2014 Bills and Proposed State Budget Expenditures

This year three new bills have been introduced in the State Legislature:

- AB 71 (V. Manuel Pérez) would require the Secretary of the Natural Resources Agency, in consultation and coordination with the Salton Sea Authority, to lead Salton Sea restoration efforts. It also calls for creation of a technical advisory group, and authorizes expenditure of up to $2,000,000 from the Salton Sea Restoration Fund to pay for a restoration funding and feasibility study.
- AB 147 (V. Manuel Pérez) calls for a strategic plan to address air pollution at the Salton Sea, including monitoring and mitigation of dust pollution.
- AB 148 (V. Manuel Pérez) would facilitate development of renewable energy potential at the Salton Sea. It calls for establishment of a Salton Sea Renewable Energy and Biofuels Research and Development Program, which would include grants for research and commercial development of renewable energy and biofuel resources through activities such as algae harvesting in the Salton Sea basin.

The Governor's 2013/14 State Budget proposes an increased appropriation of $12.1 million from Proposition 84 bond funds earmarked for the Salton Sea for the restoration of between 800 and 1,200 acres of habitat. The proposal would implement a pilot project to create habitat through the construction of ponds at sites where the sea bed is exposed because of evaporation. The proposal requests reappropriation of funds to provide additional funding for the restoration project, which is estimated to cost approximately $28 million to complete.

Federal Action

Within the federal government, agencies of the Department of the Interior have engaged in efforts to preserve habitat and research restoration potential. In 1930, the Salton Sea Wildlife Refuge was established at the southern end of the Salton Sea for the protection of the area's waterfowl. In 1994, the U.S. Bureau of Reclamation (Reclamation) formally entered into a collaborative agreement with the California Department of Water Resources and the Salton Sea Authority to conduct technical studies on the Salton Sea and to identify potential solutions. In 1998, the Salton Sea Reclamation Act of 1998 (Public Law 105-372) directed Reclamation to study management options for the Salton Sea, specifically regarding salinity, fish and wildlife preservation, recreation, and economic development. The federal government, including Reclamation and the U.S. Geological Survey, has conducted a number of detailed geotechnical and ecological studies related to the Salton Sea.

The U.S. Army Corps of Engineers, jointly with the Natural Resources Agency, prepared and released in 2012 a draft Salton Sea Species Conservation Habitat (SCH) Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The SCH Project EIS/EIR proposes a range of aquatic habitats to support fish and wildlife species dependent on the Salton Sea. A

preferred alternative has not yet been selected. Some funding for implementation of the SCH Project has been authorized at the federal level but has not yet been appropriated by Congress.

Successful resolution of the complex environmental and social challenges posed by the Salton Sea will require a collaborative effort on the part of multiple agencies at the federal, state and local level, as well as tribal governments, nonprofit groups, private interests and local citizens. The challenges are significant, but the environmental, human and social costs of inaction are significant as well. The Salton Sea also competes for attention at the state and federal level with numerous other pressing priorities. Continued progress will require focused leadership, public education on the importance of the Sea, and visible on-the-ground projects that demonstrate achievable results.