

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2610 (Garcia) – As Introduced February 14, 2024

SUBJECT: Protected species: authorized take: Salton Sea Management Program: System Conservation Implementation Agreement

SUMMARY: Permits the Department of Fish and Wildlife (DFW) to authorize the take of fully protected species resulting from the implementation of the Salton Sea Management Program (SSMP) and a system conservation implementation agreement (SCIA) between the U.S. Bureau of Reclamation and the Imperial Irrigation District (IID). Specifically, **this bill:**

- 1) Permits DFW to authorize the take of fully protected species resulting from implementation of the SSMP and a SCIA between the U.S. Bureau of Reclamation and IID. The take of a fully protected species must meet requirements of an incidental take permit (ITP) issued pursuant to the California Endangered Species Act (CESA) or recovery standards under the Natural Community Conservation Planning Act.
- 2) Provides that this bill shall not be construed to exempt the implementation of a SCIA from any other provision of law.
- 3) Makes technical and conforming changes.

EXISTING LAW:

- 1) Designates certain species as fully protected and prohibits the taking of these species, with limited exceptions [Fish and Game Code (FGC) §§ 3511, 4700, 5050, 5515].
- 2) Permits the take of fully protected species for any fully protected species conserved and managed as a covered species under an approved Natural Community Conservation Plan (NCCP) (FGC § 2835).
- 3) Permits DFW to authorize the take of certain fully protected species in specific cases, with restrictions (FGC §§ 2081.4, 2081.5, 2081.6, 2081.9, 2081.10, 2081.11, 2081.12).
- 4) Permits DFW to authorize the take of fully protected species resulting from impacts due to the implementation of the Quantification Settlement Agreement (QSA) (FGC § 2081.7).
- 5) Permits DFW to authorize the take of a fully protected species resulting from impacts attributable to the implementation of specified water, transportation, and energy infrastructure projects if certain conditions are satisfied (FGC § 2081.15).
- 6) Prohibits the taking of an endangered species, threatened species, or candidate species, except in certain situations, including through the issuance of a permit commonly known as an ITP, if all of the following conditions are met:
 - a) The take is incidental to an otherwise lawful activity;

- b) The impacts of the authorized take are minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking of the species; and
 - c) The applicant ensures adequate funding to implement the measures required by paragraph (b) and for monitoring compliance with, and effectiveness of, those measures [FGC § 2081 (b)].
- 7) Requires DFW to collect a fee for the issuance of an ITP at a cost ranging from \$6,000 to \$30,000 depending on the overall cost of the project receiving coverage under the ITP and the method the project uses to mitigate its environmental impacts (FGC § 2081.2).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill expands an existing exemption from the fully protected species statutes to IID’s implementation of water conservation projects under a pending agreement with the federal government. The author argues this is a narrow exception and it is necessary to allow IID “to conserve a cumulative target of 800,000 acre-feet [AF] of Colorado River water during 2024-2026.” This bill is sponsored by IID; IID indicates that the 800,000 AF of conserved water will “be generated entirely by agricultural water users voluntarily participating in conservation programs administered by IID.” These conservation programs may include voluntary land fallowing, conversion to more efficient irrigation systems (e.g., drip irrigation), switching to less thirsty crops, and deficit irrigation.
- 2) **Background.** The 1,440-mile-long Colorado River passes through parts of seven U.S. states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming), two Mexican states (Baja California and Sonora), and many Native American tribal lands, which depend on it for water supply, hydropower, recreation, fish and wildlife habitat, and other benefits. The river is a critical source of water for California and the West as its waters are used to irrigate 5.5 million acres of agricultural land and to provide municipal and industrial water supplies to 40 million people.

Law of the River. The Colorado River is managed and operated under numerous compacts, federal laws, court decisions and decrees, contracts, and regulatory guidelines collectively known as the "Law of the River." The “Law of the River” allocates a total of 16.5 million acre-feet (MAF) of the river’s flow to the seven basin states and Mexico: 7.5 MAF to the upper basin states (Wyoming, Utah, Colorado, and New Mexico), 7.5 MAF to the lower basin states (Nevada, Arizona, and California), and 1.5 MAF to Mexico. The allocations for the lower basin states are enshrined in the federal Boulder Canyon Act of 1928: California at 4.4 MAF; Arizona at 2.8 MAF; and Nevada at 0.3 MAF. Historically, California used more than its 4.4 MAF allocation as it was more populous and Arizona and Nevada did not exercise their full allocations; however, as those states’ populations grew, Arizona and Nevada began to call on their full allocations and the California agencies that drew on Colorado River water had to use less. This was accomplished via the QSA.

Drought and over-allocation of the Colorado River. A major shortcoming of the “Law of the River” is that it over-allocates the flow of the river. Data show that the average natural flow from 1906-2018 was about 14.8 MAF (a nearly 2 MAF deficit). As if this were not

problematic enough, the Colorado River basin has experienced its driest 23-year period on record since 2000 during which its average natural flow has been roughly 12.4 MAF. In order to address this structural deficit and the severe drought, the federal government and water users have negotiated a series of additional guidelines and agreements. These include the “Interim Guidelines” in 2007, the Drought Contingency plans in 2019, and a call by the U.S. Bureau of Reclamation to reduce demand on the Colorado River by as much as 2 MAF to 4 MAF annually.

To identify options to achieve the necessary reductions in water use, U.S. Bureau of Reclamation initiated an environmental review process in April 2023. In May 2023, the Lower Basin states (Arizona, Nevada, and California) proposed a series of actions to conserve 3 MAF by 2026, with at least 1.5 MAF conserved by the end of 2024. This proposal was analyzed by U.S. Bureau of Reclamation and is the preferred alternative in the final environmental document issued in March 2024; under the preferred alternative, California will reduce its cumulative water use by 1.6 MAF by 2026 (800,000 by IID) and the federal government will compensate water users for up to 2.3 MAF of water they do not use. IID is working on a SCIA with U.S. Bureau of Reclamation to achieve its water conservation target through “system conservation” actions. “System conservation” refers to temporary, voluntary, and compensated reductions in consumptive water use. A system conservation program began in the Upper Basin in 2015 and is being extended to the Lower Basin to help achieve necessary water use reductions.

QSA. This QSA was finalized in 2003 and is a series of agreements that limits California’s usage of Colorado River to its allocation of 4.4 MAF, apportions the necessary cutbacks amongst California water agencies, facilitates a transfer of 300,000 AF of water annually from IID to San Diego County Water Authority, and provides (theoretically) for management of the impacts of water cutbacks on the Salton Sea.

SSMP. This program is implemented by the California Natural Resources Agency (CNRA) in collaboration with the Department of Water Resources and Department of Fish and Wildlife. The SSMP is designed to address impacts to the Salton Sea resulting from decreased flows into the Sea as a result of the QSA. CNRA is currently working on the *Phase 1: 10-Year Plan* under SSMP to implement dust suppression and habitat restoration projects on roughly 30,000 acres by 2028. SSMP also includes a *Long-Range Plan* to manage projects and impacts at the Salton Sea beyond 2028. The *Long-Range Plan* is expected to be final in the near future. This bill allows SSMP projects to “take” fully protected species that reside in the Salton Sea region in order to implement SSMP projects.

Fully protected species. In the 1960s, California began its efforts to identify and protect animals that were rare or at risk of extinction within the state. These efforts resulted in lists of 37 fully protected species that may not be taken or possessed, with limited exceptions – for example, for scientific research or, in the case of fully protected birds, for the relocation of birds to protect livestock. Since the creation of the fully protected species lists, Congress and the Legislature enacted the federal Endangered Species Act (ESA) and CESA, respectively. Of the 37 species currently designated as fully protected, eight are also listed as threatened and 19 are also listed as endangered under CESA. IID anticipates that in order to implement its water conservation program under the SCIA, it will need allowance for incidental take of California Black Rail and Yuma Rideway’s Rail (formerly Yuma clapper rail); both are currently fully protected species under FGC § 3511.

- 3) **Arguments in support.** IID supports this bill arguing that it is necessary because it extends limited authority to allow for implementation of the SCIA(s) that IID is currently negotiating with the U.S. Bureau of Reclamation. Implementation of these agreements will allow IID to conserve a cumulative 800,000 AF of Colorado River water that will help address drought shortages. IID notes that completion of the SCIA will also trigger the release of an additional \$175 million in federal funding to implement environmental projects at the Salton Sea.
- 4) **Proposed committee amendments.** Given that implementation of SSMP is underway and CNRA and its collaborating agencies are making progress in implementing it, extending the provisions of this bill to SSMP implementation is unnecessary. To address this, the Committee may wish to request that the author take the following amendments:

Amendment 1 – Amend Fish and Game Code § 2081.7(a) as follows:

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, *or implementation of ~~the Salton Sea Management Program, or~~* any System Conservation Implementation Agreement between the United States Bureau of Reclamation and the Imperial Irrigation District to implement the Lower Colorado River Basin System Conservation and Efficiency Program for the years 2024 to 2026, inclusive, on all of the following:

Amendment 2 – Amend Fish and Game Code § 2081.7(f) as follows:

(f) This section shall not be construed to exempt from any other provision of law the Quantification Settlement Agreement, 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, *or implementation of the ~~Salton Sea Management Program, or~~* any System Conservation Implementation Agreement between the United States Bureau of Reclamation and the Imperial Irrigation District to implement the Lower Colorado River Basin System Conservation and Efficiency Program for the years 2024 to 2026, inclusive.

IID is currently working to finalize an SCIA with U.S. Bureau Reclamation and plans to begin implementation this year. In order to allow IID to take advantage of the provisions of this bill as soon as possible and enable water conservation projects, the Committee may wish to add an urgency clause to this bill.

Amendment 3 – Add an urgency clause.

- 5) **Related legislation.** SB 147 (Ashby), Chapter 59, Statutes of 2023, permits DFW to authorize the take of a fully protected species resulting from impacts attributable to the implementation of specified water, transportation, and energy infrastructure projects if certain conditions are satisfied.

SB 482 (Kuehl), Chapter 617, Statutes of 2002, permits DFW to authorize the take of fully protected species resulting from impacts due to implementation of the QSA.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies
California Association of Professional Scientists
California Municipal Utilities Association
Imperial Irrigation District
San Diego County Water Authority

Opposition

None on file

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