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Governance and Funding Options for Restoring the Salton Sea

LEGISLATIVE ANALYST'S OFFICE

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Resources and Transportation
Hon. Richard S. Gordon, Chair





Background

- ☑ ***Salton Sea Created in 1905.*** Periodically over the past several thousand years, changes in the course of the Colorado River would spill water for months or years into the area now occupied by the Salton Sea, feeding it until a subsequent change diverted the river and left the lake without a significant source of water. In 1905, Colorado River water overflowed from a new irrigation canal in the Imperial Valley and for several months this water flowed into the dry lake bed where the sea now lies.
- ☑ ***Agricultural Runoff Feeds the Sea.*** Agricultural runoff from farms in the Imperial Valley is currently the main inflow of water into the sea. This runoff has a relatively high salt content. Because the sea has no outlet, water that enters can only leave through evaporation, leaving behind the salts.
- ☑ ***Sea Is Becoming Increasingly Saline.*** This agricultural runoff is insufficient to maintain the current condition of the sea. Without a significant source of water flowing into the sea, evaporation losses are reducing the volume of the sea. Therefore, although the sea was initially a fresh water body, it is now saltier than the Pacific Ocean and will become even saltier over time.
- ☑ ***Sea Has Become Important Bird Habitat.*** As wetland habitat has been lost to development throughout California and northern Mexico, many bird species have come to rely on the sea as a stopover point on their annual migrations, including some protected species. Those birds feed on the remaining fish in the sea, but as the sea becomes saltier, fish are not likely to survive and most bird species will lose this key source of food.



State's Obligation Based on Contractual Agreement and Statute

- Quantification Settlement Agreement (QSA) Signed to Meet Mandated Reduction.*** Growing populations in Arizona and Nevada forced California to reduce its Colorado River water use from a high of 5.2 million acre-feet (af) per year to its current allocation 4.4 million af per year. To meet the mandated reduction, a series of agreements (the QSA) were made between the federal government, the State of California, and several Southern California water agencies in 2003. Key features of the QSA include:

 - The transfer of up to 300,000 af per year of water from the Imperial Irrigation District to other Southern California water districts.
 - The lining of the All-American Canal to save an estimated 77,000 af per year in water from being lost.

- Water Transfer Likely to Have Environmental Impacts.*** Transferring water out of the Imperial Valley will reduce the amount of water flowing into the sea—further increasing salinity and causing the sea's shoreline to recede. The newly exposed lakebed consists of fine particles that can become airborne and exacerbate existing air quality problems in the area. Under the California Environmental Quality Act, these environmental impacts must be mitigated.

- State's Financial Obligation to Restore the Sea.*** In order to facilitate the signing of the QSA, the state agreed (as a signing party to the QSA and in statute) to assume most of the financial responsibility for mitigating the impacts of the transfer and for restoring the sea. Chapter 613, Statutes of 2003 (SB 654, Machado) caps the financial responsibility of the participating water districts for mitigation at \$133 million. The state thus has obligated itself to pay the remaining costs for mitigation and restoration, for which estimates range widely from \$800 million to \$8.9 billion.



State's Obligation Based on Contractual Agreement and Statute

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Current Status of the QSA. In December 2009, a Sacramento County Superior Court judge invalidated the QSA because it was predicated on the Legislature's statutory promise to fund the mitigation and restoration—a promise that the court said would violate the constitutional prohibition on indebtedness without a vote of the people. Although enforcement of the ruling has been stayed temporarily, the outcome of the case is uncertain at this time. If the invalidation of the QSA is upheld through the appeals process, it is unclear what the state's role in restoration of the sea will be.



Overview of Key Restoration Alternatives

- Objectives of Restoration.** Various state laws passed during the signing of the QSA required the state Secretary of Natural Resources to develop a “preferred alternative” to restore the sea that maximizes the following three objectives:

 - Restoration of long-term stable aquatic and shoreline habitat for the historic levels and diversity of fish and wildlife.
 - Elimination of air quality impacts from restoration projects.
 - Protection of water quality.

- Key Restoration Alternatives.** The Programmatic Environmental Impact Report for the QSA analyzed eight project alternatives that meet the statutory restoration objectives to varying degrees. Two key alternatives are briefly described below.

 - **Preferred Alternative.** Based on the input of several advisory committees and public comments, the Secretary selected a preferred alternative with the following key features: wildlife habitat at both the north and south ends of the sea, a large sea for recreation and for open water habitat in a “horseshoe” shape around the north, east, and west sides of the lake; exposed playa with dust mitigation measures; and two brine sinks. Capital costs for the preferred alternative are estimated to be \$8.9 billion over 75 years. The attached figure depicts this alternative.
 - **“No-Action” Alternative.** The no-action alternative assumes that the state would still undertake certain environmental mitigation activities—particularly air quality mitigation measures such as dust suppression—even without a full restoration. This no-action alternative is projected to have a construction cost of approximately \$800 million over 75 years.



Overview of Key Restoration Alternatives

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Restoration Priorities Should Be Established by Legislature.

We have previously recommended that the Legislature formally adopt a restoration plan if it wishes to proceed with the restoration effort. We think it is important for the Legislature to clearly prioritize among the various restoration outcomes, keeping in mind that viable funding sources may not be available to fund all possible restoration activities.



Potential Governance Structures

- Current Law Establishes Salton Sea Restoration Council.*** A governance structure will be required to implement whatever restoration activities the Legislature decides to undertake. For that purpose, the Salton Sea Restoration Council was created by Chapter 303, Statutes of 2010 (SB 51, Ducheny). Prior to implementation, the council is also required to evaluate a broad range of restoration plans and then recommend a plan to the Legislature by June 30, 2013, taking into consideration the impacts of the restoration plan on air quality, fish and wildlife habitat, water quality, as well as the technical and financial feasibility of the restoration plan.

- Proposed Changes to Governance Structure.*** The administration has not yet taken action to set up the council, and in fact the Governor proposed its elimination in the 2011-12 May Revision. The elimination was rejected by the Legislature, although there is some legislative interest in revisiting the governance structure for the restoration.

- Considerations for Any Governance Structure.*** In our 2008 report, *Restoring the Salton Sea*, we identified three key outcomes that should be achieved by any governance structure:
 - Authority to carry out program goals.
 - Accountability to the administration, the Legislature, and the public.
 - Administrative efficiency.



Potential Governance Structures *(Continued)*

- Prior LAO-Recommended Structure.*** In our 2008 report (predating the legislation establishing the council), we had recommended that the state Department of Water Resources be designated as the lead implementing entity and decision-maker for Salton Sea restoration because it possesses the necessary authority and is headed by a single director that can be held accountable. It is also more efficient to empower an existing agency than to create a new organization. However, with any choice of a governance structure, there are likely trade-offs among the outcomes described above. For example, the Council structure may provide more openness and opportunities for public participation in the decision-making process.



Options for Funding Restoration



Limited State Funding Sources. Currently, dedicated funding for restoration is limited to roughly \$6.5 million derived from (1) bond funds and (2) payments from other parties to the QSA. Given the significant cost of even the no-action alternative, new funding mechanisms will be required. The main options to fund restoration, and their significant limitations, are described below:

- **Bond Funding.** The \$11 billion water bond scheduled for the ballot in November 2012 contains an allocation of up to \$100 million for early action habitat restoration measures at the Salton Sea. These actions must be consistent with the statutory restoration objectives described above. However, these monies will not be available unless statewide voters approve Proposition 1A in November 2012.
- **State Public Goods Charge for Water.** A so-called “public goods charge” on water use could raise money to fund water-related investments with state-level public benefits. Restoration of the sea might be an eligible use of the funds if such a charge were to pass. Senate Bill 34 (Simitian, 2011) would create such a charge.
- **Public-Private Partnership for Energy Production.** The Salton Sea Authority recently received a report assessing the concept of funding restoration through a public-private partnership that would produce either solar or geothermal energy in the area around the Salton Sea. The report concluded this could generate sufficient revenues to fund the restoration. However, the report made some key assumptions about generation capacity that we find to be implausible. In our view, this type of partnership is unlikely to generate sufficient revenue to fund the restoration.



Options for Funding Restoration *(Continued)*

- ***Infrastructure Financing District.*** The Salton Sea Authority is specifically authorized under current state law to create an infrastructure financing district (IFD) for the purpose of restoring the Salton Sea. An IFD captures increases in property tax revenues to fund capital improvement projects. However, an IFD cannot be used to fund operations and maintenance, which have been estimated to total \$50 million to \$140 million annually for the preferred alternative. In addition, an IFD requires development to improve property values, and in our view, such development is unlikely to occur prior to the restoration of the sea.