

APPENDIX A

**Salton Sea Ecosystem Restoration Legislation and Excerpts from the
Fish and Game Code and Water Code**

APPENDIX A SALTON SEA ECOSYSTEM RESTORATION LEGISLATION

This appendix contains the full text of the Salton Sea legislation described in Chapter 1. The five bills are:

- Senate Bill 482 (Kuehl, 2002);
- Senate Bill 277 (Ducheny, 2003);
- Senate Bill 317 (Kuehl, 2003);
- Senate Bill 654 (Machado, 2003); and
- Senate Bill 1214 (Kuehl, 2004).

This appendix also contains the text of the relevant Fish and Game Code and Water Code provisions described in Chapter 1. The relevant Fish and Game Code and Water Code provisions are:

- Fish and Game Code:
 - Section 2080 to 2085;
 - Section 2930 to 2933;
 - Section 3500 to 3516;
 - Section 4700;
 - Section 5050; and
 - Section 5500 to 5522.
- Water Code:
 - Section 1000 to 1017;
 - Section 12560 to 12565; and
 - Section 22750 to 22762.

Salton Sea Ecosystem Restoration Legislation

Senate Bill No. 482

CHAPTER 617

An act to amend Sections 3511, 4700, 5050, and 5515 of, and to add Section 2081.7 to, the Fish and Game Code, and to amend Sections 1013 and 22762 of the Water Code, relating to the Salton Sea, and making an appropriation therefor.

[Approved by Governor September 16, 2002. Filed with Secretary of State September 17, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 482, Kuehl. Salton Sea.

(1) Existing law provides that the Imperial Irrigation District is not liable for any effects to the Salton Sea or its bordering area resulting from specified conservation measures.

This bill would make legislative findings concerning the Salton Sea and a Quantification Settlement Agreement. The bill would require the Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with specified entities and individuals, to review and report to the Governor and the Legislature, on or before June 30, 2003, on certain matters pertaining to the implementation of the Quantification Settlement Agreement. The bill would authorize the Department of Fish and Game, contingent upon the execution of the Quantification Settlement Agreement among other things, to authorize the take of species resulting from specified environmental impacts attributable to the implementation of the agreement. The bill would make related conforming changes.

The bill would provide that, during the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement, if the Imperial Irrigation District utilizes land following conservation measures that ensure compliance with specified criteria set forth in the bill for the environmental impacts of a water transfer to implement the Quantification Settlement Agreement, no person or local agency, as defined, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

The bill also would require the Secretary of the Resources Agency to establish an advisory committee representing the parties interested in the future of the Salton Sea.



(2) Existing law establishes the Fish and Game Preservation Fund, a fund that is continuously appropriated to the department to carry out the Fish and Game Code. By imposing new duties on the department, this bill would make an appropriation.

Appropriation: yes.

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

SECTION 1. (a) “Quantification Settlement Agreement” means the agreement, the provisions of which are substantially described in the draft Quantification Settlement Agreement (QSA), dated December 12, 2000, and submitted for public review by the Quantification Settlement Agreement parties, and as it may be amended, and that shall include as a necessary component the implementation of 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 (IID/SDCWA Transfer Agreement), and as it may be amended, and any QSA-related program that delivers water at the intake of the Metropolitan Water District of Southern California’s Colorado River Aqueduct.

(b) It is the intent of the Legislature to allocate fifty million dollars (\$50,000,000) from funds available 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), as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources, to assist in the implementation of the preferred alternative or other related restoration activities, including the program referred to in paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and Game Code, at the Salton Sea or the lower Colorado River, or to assist in the development of a natural community conservation plan that is consistent with the initiative and that is implemented to effectuate the QSA.

(c) The Legislature finds that it is important to the state to meet its commitment to reduce its use of water from the Colorado River to 4.4 million acre-feet per year. The Legislature further finds that it is important that actions taken to reduce California’s Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the state. The Legislature further finds that species previously designated as fully protected may be taken during activities intended to meet the state’s commitment to reduce its use of Colorado River water as long as those activities are found to comply with existing law, including Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.



(d) California’s Colorado River Water Use Plan is a framework developed to allow California to meet its Colorado River needs from within its basic annual apportionment. California will be required to reduce the amount of Colorado River water it uses by up to 800,000 acre-feet per year.

(e) California’s basic apportionment of Colorado River water is 4.4 million acre-feet per year, but until recently, due to the availability of surplus river water and apportioned but unused water of Nevada and Arizona, California has used up to 5.2 million acre-feet per year over the past ten years. About 700,000 acre-feet of this additional water has been used to fill the Colorado River Aqueduct, which transports water to the southern California urban coast. Nevada and Arizona are now using, or are close to using, their full apportionments, and California can no longer rely on that surplus of water.

(f) The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented. The transfer of water from the Imperial Irrigation District to the San Diego County Water Authority and the other Quantification Settlement Agreement (QSA) parties pursuant to the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

(g) Restoration of the Salton Sea is in the state and national interest. Congress recognized in the Salton Sea Reclamation Act of 1998, Public Law 105-372, that appropriate federal agencies should offer alternative restoration options to Congress and the public in order to avoid further deterioration of the internationally significant habitat and wildlife values of the Salton Sea and to protect the wide array of economic and social values that exist in the immediate vicinity of the Salton Sea. The failure to issue that report in a timely fashion has unnecessarily constrained the Legislature’s ability to consider fully the costs and benefits of various options to restoration that should be undertaken at the Salton Sea.

SEC. 2. Section 2081.7 is added to the Fish and Game Code, 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 the act that added this section during the 2001–02 Regular Session, 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 December 31, 2002.

(c) After consultation with the Department of Water Resources and an opportunity for public review and comment, the department determines, based on the best available science, that the implementation of the Quantification Settlement Agreement during the first 15 years that the agreement is in effect (1) will not result in a material increase in projected salinity levels at the Salton Sea, and (2) the agreement will not foreclose alternatives for reclamation of the Salton Sea as summarized in Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372).

(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 shall use all available authority to enter into a memorandum of understanding (MOU) between the Secretary of the Interior, the Salton Sea Authority, and the Governor, 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 developing, selecting, and implementing alternatives for projects that realize the objectives of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding shall be consistent with the authority granted to the Secretary of the Interior under the Salton Sea Reclamation Act of 1998 (P.L. 105-372). The memorandum of understanding, at a minimum, shall establish all of the following:

(A) Criteria for evaluation and 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.

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

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

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

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

(1) If the department finds that increases in salinity at the Salton Sea will no longer adversely affect piscivorous birds at the Salton Sea, the department may enter into an agreement with the Imperial Irrigation



District that phases out the district's water or irrigation runoff to the Salton Sea.

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

(g) 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. 3. Section 3511 of the Fish and Game Code is amended to read:

3511. (a) Except as provided in Section 2081.7, fully protected birds or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research and may authorize the live capture and relocation of such species pursuant to a permit for the protection of livestock. Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

- (1) American peregrine falcon (*Falco peregrinus anatum*).
- (2) Brown pelican.
- (3) California black rail (*Laterallus jamaicensis coturniculus*).
- (4) California clapper rail (*Rallus longirostris obsoletus*).
- (5) California condor (*Gymnogyps californianus*).
- (6) California least tern (*Sterna albifrons browni*).
- (7) Golden eagle.
- (8) Greater sandhill crane (*Grus canadensis tabida*).
- (9) Light-footed clapper rail (*Rallus longirostris levipes*).
- (10) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- (11) Trumpeter swan (*Cygnus buccinator*).
- (12) White-tailed kite (*Elanus leucurus*).
- (13) Yuma clapper rail (*Rallus longirostris yumanensis*).

SEC. 4. Section 4700 of the Fish and Game Code is amended to read:

4700. (a) Except as provided in Section 2081.7, fully protected mammals or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize



the issuance of permits or licenses to take any fully protected mammal and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the commission may authorize the collecting of those species for necessary scientific research. Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

(2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (*Mirounga angustirostris*).

(4) Guadalupe fur seal (*Arctocephalus townsendi*).

(5) Ring-tailed cat (genus *Bassariscus*).

(6) Pacific right whale (*Eubalaena sieboldi*).

(7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).

(8) Southern sea otter (*Enhydra lutris nereis*).

(9) Wolverine (*Gulo luscus*).

SEC. 5. Section 5050 of the Fish and Game Code is amended to read:

5050. (a) Except as provided in Section 2081.7, fully protected reptiles and amphibians or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected reptile or amphibian and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research. Legally imported fully protected reptiles or amphibians or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (*Crotaphytus wislizenii silus*).

(2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

(3) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

(4) Limestone salamander (*Hydromantes brunus*).

(5) Black toad (*Bufo boreas exsul*).

SEC. 6. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) Except as provided in Section 2081.7, fully protected fish or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected fish and



no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research. Legally imported fully protected fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

- (1) Colorado River squawfish (*Ptychocheilus lucius*).
- (2) Thicktail chub (*Gila crassicauda*).
- (3) Mohave chub (*Gila mohavensis*).
- (4) Lost River sucker (*Catostomus luxatus*).
- (5) Modoc sucker (*Catostomus microps*).
- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens River pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

SEC. 7. Section 1013 of the Water Code is amended to read:

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Section 1 of the act amending this section during the 2001–2002 Regular Session, “land fallowing conservation measures” means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board’s assessment of whether the proposed land fallowing conservation plan includes



adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement, if the Imperial Irrigation District utilizes land fallowing conservation measures that ensure compliance with the criteria of subdivision (c) of Section 2081.7 of the Fish and Game Code for the environmental impacts of a water transfer to implement the Quantification Settlement Agreement, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) Subdivisions (c), (d), and (e) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before December 31, 2002.

(g) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 8. Section 22762 is added to the Water Code, to read:

22762. An action to determine the validity of the Quantification Settlement Agreement defined in subdivision (a) of Section 1 of the act that added this section during the 2001–02 Regular Session, or any action regarding a contract entered into that implements, or is referenced in, that Quantification Settlement Agreement, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.



SEC. 9. (a) The Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with the Imperial Irrigation District, Imperial County, and any other entities, organizations, and individuals deemed appropriate by the secretaries of those two agencies, shall review and report to the Governor and the Legislature, on or before June 30, 2003, on all of the following:

(1) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1.

(2) Measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize as far as practicable those economic impacts.

(3) Whether and to what extent funds provided to the Imperial Irrigation District for transferred water under the Quantification Settlement Agreement, together with any other funds that have been made available for these purposes would mitigate those economic impacts.

(4) The amount of any additional funds required to mitigate the economic impacts.

(b) If the report required under this section indicates that additional funds are required, the report shall include recommendations to the Governor and the Legislature on all of the following:

(1) Proposed means for providing those additional funds, including, but not limited to, funding by the state.

(2) Formulation of a program to administer those funds in the most effective manner. The program shall be developed in consultation with the Departments of Finance, Food and Agriculture, and Water Resources, with the Imperial Irrigation District, and with any other entities deemed appropriate by the secretaries of the two agencies.



Senate Bill No. 277

CHAPTER 611

An act to add Chapter 13 (commencing with Section 2930) to Division 3 of the Fish and Game Code, and to amend Section 9 of Chapter 617 of the Statutes of 2002, relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 277, Ducheny. Water: Salton Sea.

(1) Under existing law, various agencies carry out responsibilities relating to the Salton Sea.

This bill would enact the Salton Sea Restoration Act. The bill would establish the Salton Sea Restoration Fund and would require the fund to be administered by the Director of Fish and Game. The bill would require the money deposited in the fund to be expended, upon appropriation by the Legislature, for various purposes relating to the restoration of the Salton Sea. The bill would authorize the Department of Water Resources to contract with water suppliers to purchase and sell water made available by specified means to achieve the goals of the act.

(2) Existing law requires the Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with others, to review and report to the Governor and the Legislature, on or before June 30, 2003, on the nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize those economic impacts, whether the provision of certain funds would minimize those economic impacts, and the amount of additional funds required to mitigate those economic impacts. Existing law requires the report to include recommendations to the Governor and the Legislature, if the report indicates that additional funds are required, relating to the formulation of a program to administer those funds and requires that program to be developed in consultation with certain agencies.

This bill, instead, would require the Department of Food and Agriculture, if funds are appropriated for this purpose, and in consultation with others, to prepare that report. The bill would revise the list of agencies to be consulted for purposes of formulating that program.



(3) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department and the Fish and Game Commission to pay all necessary expenses incurred in carrying out the Fish and Game Code and other state laws.

By imposing new duties on the department, the bill would make an appropriation.

(4) The bill would become operative only if SB 654 and SB 317 are both chaptered and become effective on or before January 1, 2004.

Appropriation: yes.

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

SECTION 1. Chapter 13 (commencing with Section 2930) is added to Division 3 of the Fish and Game Code, to read:

CHAPTER 13. SALTON SEA RESTORATION ACT

2930. This chapter shall be known and may be cited as the Salton Sea Restoration Act.

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.

2932. There is hereby established the Salton Sea Restoration Fund which shall be administered by the director. Money deposited in the fund shall be expended, upon appropriation by the Legislature, for the following purposes:

(a) Environmental and engineering studies related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the sea.



(b) Implementation of conservation measures necessary to protect the fish and wildlife species dependent on the Salton Sea, including adaptive management measurements pursuant to Section 2081.7. These conservation measures shall be limited to the Salton Sea and lower Colorado River ecosystems, including the Colorado River Delta.

(c) Implementation of the preferred Salton Sea restoration alternative.

(d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

2933. The Department of Water Resources may contract with water suppliers to purchase and sell water made available pursuant to Section 1745.02 of the Water Code to achieve the goals of this chapter.

SEC. 2. Section 9 of Chapter 617 of the Statutes of 2002 is amended to read:

Sec. 9. (a) The Department of Food and Agriculture, if funds are appropriated for this purpose, and in consultation with the Imperial Irrigation District, Imperial County, and any other entities, organizations, and individuals deemed appropriate by the Secretary of Food and Agriculture, shall review and report to the Governor and the Legislature, on or before June 30, 2005, on all of the following:

(1) The expected nature and extent of any economic impacts related to the use of land fallowing in the Imperial Valley in connection with the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1.

(2) Measures taken by the Imperial Irrigation District in formulating a fallowing program to minimize as far as practicable those economic impacts.

(3) Whether and to what extent funds provided to the Imperial Irrigation District for transferred water under the Quantification Settlement Agreement, together with any other funds that have been made available for these purposes would mitigate those economic impacts.

(4) The amount of any additional funds required to mitigate the economic impacts.

(b) If the report required under this section indicates that additional funds are required, the report shall include recommendations to the Governor and the Legislature on all of the following:

(1) Proposed means for providing those additional funds, including, but not limited to, funding by the state.

(2) Formulation of a program to administer those funds in the most effective manner. The program shall be developed in consultation with the Department of Finance, the Resources Agency, the Employment



Development Department, the Imperial Irrigation District, Imperial Valley area governments, and any other entities deemed appropriate by the Secretary of Food and Agriculture.

SEC. 3. This act shall become operative only if SB 654 and SB 317 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.



Senate Bill No. 317

CHAPTER 612

An act to amend Section 2081.7 of the Fish and Game Code and to amend Section 1013 of the Water Code, relating to the resources, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 317, Kuehl. Resources.

(1) Existing law authorizes the Department of Fish and Game, contingent upon, among other things, a determination by the Department of Fish and Game and the execution of a specified Quantification Settlement Agreement on or before December 31, 2003, to authorize the take of species resulting from certain environmental impacts attributable to the implementation of the agreement.

This bill, for the purposes of that provision, would require that agreement be executed on or before October 12, 2003, and would revise that contingency relating to a determination by that department.

(2) Existing law requires the Secretary of the Resources Agency to use all available authority to enter into a memorandum of understanding, with certain components, for the purposes of developing, selecting, and implementing alternatives for projects that realize specified objectives of the Salton Sea Reclamation Act. Existing law requires the secretary, with respect to this memorandum, to establish an advisory committee and specifies the composition of that committee.

This bill would require the secretary to undertake a study relating to the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The bill would require the secretary to use all available authority to enter into a memorandum of understanding with the Secretary of the Interior to obtain federal participation in the restoration of the Salton Sea. The bill would revise the composition of that advisory committee.

(3) Existing law requires that, for the purposes of evaluating the use of water by the Imperial Irrigation District during the term of the Quantification Settlement Agreement and for 6 years thereafter, it shall be conclusively presumed that any water conserved or used for mitigation purposes through land following conservation measures has been conserved in the same amount as if conserved by efficiency improvements.



Existing law prohibits the forfeiture or impairment of a right to use water that is conserved in a described manner to carry out a transfer pursuant to the Quantification Settlement Agreement or to mitigate environmental impacts of that transfer. Existing law provides that during the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under that agreement, if the Imperial Irrigation District uses land following conservation measures that ensure compliance with certain criteria, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available.

Existing law makes the operation of these provisions subject to the execution of the Quantification Settlement Agreement on or before December 31, 2002.

This bill would make the operation of these provisions, as modified, subject to the execution of that agreement on or before October 12, 2003. The bill would provide that during the period in which the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under that agreement and certain other water delivery obligations, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available. The bill, with certain exceptions and subject to the execution of that agreement on or before October 12, 2003, would subject any water transferred by the district to an ecosystem restoration fee during the initial term in which that agreement is in effect.

(4) Existing law establishes the Fish and Game Preservation Fund, a fund that is continuously appropriated to the department to carry out the Fish and Game Code.

By imposing new duties on the department, this bill would make an appropriation.

(5) This bill would become operative only if SB 277 and SB 654 are both chaptered and become effective on or before January 1, 2004.

Appropriation: yes.

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 the act that added this section during the 2001–02 Regular Session, 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 Senate Bill 654 of the 2003–04 Regular Session.

(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.

(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 Senate Bill 654 of the 2003-04 Regular Session.

(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 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. 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 and suggested criteria for the 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.

(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.



(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.

(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.

(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 1013 of the Water Code is amended to read:

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Section 1 of the act amending this section during the 2001–02 Regular Session, “land fallowing conservation measures” means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:



(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through land fallowing conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land fallowing conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement and its water delivery obligations under subdivision (c) of Section 2081.7 of the Fish and Game Code, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:



(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

(h) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 3. This act shall only become operative if SB 277 and SB 654 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.



Senate Bill No. 654

CHAPTER 613

An act to amend Section 12562 of the Water Code, and to amend Section 1 of Chapter 617 of the Statutes of 2002, relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed with Secretary of State September 29, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 654, Machado. Water: Salton Sea: Colorado River.

(1) Existing law appropriates General Fund moneys to, among other things, line portions of the All American Canal and the Coachella Branch of the All American Canal. Existing law requires the lining projects to be completed not later than December 31, 2006, or such later date as may be required by extraordinary circumstances.

This bill would make legislative findings as to the extraordinary circumstances that prevent the lining projects from being completed by December 31, 2006, and would extend the date to December 31, 2008.

(2) Existing law makes legislative findings concerning the Salton Sea and a Quantification Settlement Agreement, including a finding that species previously designated as fully protected may be taken during activities intended to meet the state's commitment to reduce its use of Colorado River water, as long as those activities are found to comply with existing law.

This bill would, instead, make findings permitting the taking incidental to those activities.

(3) Existing law provides for a California's Colorado River Water Use Plan, and for a Quantification Settlement Agreement.

This bill would make a legislative finding and declaration that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement. The bill would permit the Department of Fish and Game to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements, and would specify the costs to be paid by the agencies that are parties to the agreement. By authorizing the department to enter into the agreement, this bill would



make an appropriation by authorizing expenditures from the continuously appropriated Fish and Game Preservation Fund.

(4) This bill would become operative only if SB 277 and SB 317 are both chaptered and become effective on or before January 1, 2004.

Appropriation: yes.

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

SECTION 1. Section 12562 of the Water Code is amended to read:

12562. (a) (1) In furtherance of implementing and achieving the goals of the “California Plan,” the sum of two hundred million dollars (\$200,000,000) in the account shall be used by the director to finance and arrange for lining portions of the All American Canal and the Coachella Branch of the All American Canal.

(2) The canal lining projects shall be completed not later than December 31, 2008, or such later date as may be required by extraordinary circumstances.

(3) The allocation of the water conserved from the canal lining projects and to be made available to the Metropolitan Water District of Southern California shall be consistent with federal law and shall be determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the director and the United States Secretary of the Interior.

(b) (1) The sum of thirty-five million dollars (\$35,000,000) from the account shall be used by the director to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the “California Plan.”

(2) Water stored in connection with the groundwater conjunctive use programs described in paragraph (1) shall be for the benefit of the member public agencies of the Metropolitan Water District of Southern California.

(3) Nothing in this subdivision limits the ability of the Metropolitan Water District of Southern California to enter into agreements regarding the sharing of any water made available under this subdivision.

(c) The Legislature finds that the extension of the date from December 31, 2006, to December 31, 2008, for completing the canal project linings under paragraph (2) of subdivision (a) during the 2003 portion of the 2003–04 Regular Session is required due to extraordinary circumstances. The Legislature finds that there have been unforeseen construction delays, contract award delays, and changed conditions



requiring design modifications for lining the All American Canal and the Coachella Branch of the All American Canal, and that these circumstances are extraordinary.

SEC. 2. Section 1 of Chapter 617 of the Statutes of 2002 is amended to read:

Section 1. (a) “Quantification Settlement Agreement” means the agreement, the provisions of which are substantially described in the draft Quantification Settlement Agreement (QSA), dated December 12, 2000, and submitted for public review by the Quantification Settlement Agreement parties, and as it may be amended, and that shall include as a necessary component the implementation of 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 (IID/SDCWA Transfer Agreement), and as it may be amended, and any QSA-related program that delivers water at the intake of the Metropolitan Water District of Southern California’s Colorado River Aqueduct.

(b) It is the intent of the Legislature to allocate fifty million dollars (\$50,000,000) from funds available 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), as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources to prepare the restoration study, to assist in the implementation of the preferred alternative or other related restoration activities, including the program referred to in paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and Game Code, at the Salton Sea or the lower Colorado River, or to assist in the development of a natural community conservation plan that is consistent with the initiative and that is implemented to effectuate the QSA.

(c) The Legislature finds that it is important to the state to meet its commitment to reduce its use of water from the Colorado River to 4.4 million acre-feet per year. The Legislature further finds that it is important that actions taken to reduce California’s Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the state. The Legislature further finds that species previously designated as fully protected may be taken incidental to activities intended to meet the state’s commitment to reduce its use of Colorado River water as long as those activities are found to comply with existing law, including Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(d) California’s Colorado River Water Use Plan is a framework developed to allow California to meet its Colorado River needs from



within its basic annual apportionment. California will be required to reduce the amount of Colorado River water it uses by up to 800,000 acre-feet per year.

(e) California's basic apportionment of Colorado River water is 4.4 million acre-feet per year, but until recently, due to the availability of surplus river water and apportioned but unused water of Nevada and Arizona, California has used up to 5.2 million acre-feet per year over the past ten years. About 700,000 acre-feet of this additional water has been used to fill the Colorado River Aqueduct, which transports water to the southern California urban coast. Nevada and Arizona are now using, or are close to using, their full apportionments, and California can no longer rely on that surplus of water.

(f) The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented. The transfer of water from the Imperial Irrigation District to the San Diego County Water Authority and the other Quantification Settlement Agreement (QSA) parties pursuant to the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

(g) Restoration of the Salton Sea is in the state and national interest. Congress recognized in the Salton Sea Reclamation Act of 1998, Public Law 105-372, that appropriate federal agencies should offer alternative restoration options to Congress and the public in order to avoid further deterioration of the internationally significant habitat and wildlife values of the Salton Sea and to protect the wide array of economic and social values that exist in the immediate vicinity of the Salton Sea. The failure to issue that report in a timely fashion has unnecessarily constrained the Legislature's ability to consider fully the costs and benefits of various options to restoration that should be undertaken at the Salton Sea.

SEC. 3. The Legislature hereby finds and declares that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, as follows:

(a) Notwithstanding any other provision of law, the Department of Fish and Game may enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements. The Director of the Department of Fish and Game or his or her designee shall chair the authority created by the joint powers agreement. The joint powers agreement shall include the following agencies:

- (1) Coachella Valley Water District.



- (2) Imperial Irrigation District.
- (3) San Diego County Water Authority.

(b) Costs for environmental mitigation requirements shall be allocated based on an agreement among Imperial Irrigation District, the Coachella Valley Water District, the San Diego County Water Authority and the Department of Fish and Game and shall include the following:

(1) Costs up to, and not to exceed, one hundred thirty-three million dollars (\$133,000,000) shall be paid by the Imperial Irrigation District, the Coachella Valley Water District, and the San Diego County Water Authority for environmental mitigation requirements. Those costs may be paid to a joint powers authority established pursuant to this section. The amount of the obligation established in this paragraph shall be adjusted for inflation.

(2) Thirty million dollars (\$30,000,000) shall be paid by the Imperial Irrigation District, Coachella Valley Water District, and the San Diego County Water Authority to the Salton Sea Restoration Fund as provided in paragraph (6) of subdivision (c) of Section 2081.7 of the Fish and Game Code. This amount shall be adjusted for inflation.

(c) Except for the requirements of subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and the provisions of subdivision (b), no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea shall be required of the Imperial Irrigation District, the Coachella Valley Water District, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, including federal cost-sharing or other federal requirements. Any future state actions to restore the Salton Sea will be the sole responsibility of the State of California.

(d) As used in this section, “environmental mitigation requirements” means any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the Imperial Irrigation District Water Conservation and transfer project certified by the Imperial Irrigation District on June 28, 2002, as modified and supplemented by the addendum thereto prepared to assess subsequent revisions to the Quantification Settlement Agreement, but excluding measures required to address environmental impacts:

(1) Within the service areas of the Coachella Valley Water District, other than impacts related to the Salton Sea, the San Diego County Water Authority, and the Metropolitan Water District of Southern California.

(2) Associated with the All American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.



(e) As used in this section, “environmental review process” means any of the following:

(1) The conducting of any required environmental review or assessment, or both.

(2) The obtaining of any permit, authorization, opinion, assessment or agreement.

(3) The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water Code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

(f) As used in this section, “environmental review process” does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

SEC. 4. This act shall become operative only if SB 277 and SB 317 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.



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.



Excerpts from the Fish and Game Code

FISH AND GAME CODE

SECTION 2080-2085

2080. No person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of this code), or the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code).

2080.1. (a) Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to subdivision (c), if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement pursuant to Section 1536 of Title 16 of the United States Code or an incidental take permit pursuant to Section 1539 of Title 16 of the United States Code that authorizes the taking of an endangered species or a threatened species that is listed pursuant to Section 1533 of Title 16 of the United States Code and that is an endangered species, threatened species, or a candidate species pursuant to this chapter, no further authorization or approval is necessary under this chapter for that person to take that endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person does both of the following:

(1) Notifies the director in writing that the person has received an incidental take statement or an incidental take permit issued pursuant to the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.).

(2) Includes in the notice to the director a copy of the incidental take statement or incidental take permit.

(b) Upon receipt of the notice specified in paragraph (1) of subdivision (a), the director shall immediately have published in the General Public Interest section of the California Regulatory Notice Register the receipt of that notice.

(c) Within 30 days after the director has received the notice described in subdivision (a) that an incidental take statement or an incidental take permit has been issued pursuant to the federal Endangered Species Act of 1973, the director shall determine whether the incidental take statement or incidental take permit is consistent with this chapter. If the director determines within that 30-day period, based upon substantial evidence, that the incidental take statement or incidental take permit is not consistent with this chapter, then the taking of that species may only be authorized pursuant to this chapter.

(d) The director shall immediately publish the determination pursuant to subdivision (c) in the General Public Interest section of the California Regulatory Notice Register.

(e) Unless deleted or extended by a later enacted statute that is chaptered before the date this section is repealed, this section shall remain in effect only until, and is repealed on, the effective date of an amendment to Section 1536 or Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an incidental take statement or an incidental take permit, as applicable.

2081. The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114.

(4) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

2081.1. Nothing in this chapter or in any other provision of law prohibits the taking or the incidental taking of any endangered, threatened, or candidate species if the taking was authorized by the department through a permit or memorandum of understanding, or in a natural communities conservation plan, habitat conservation plan,

habitat management plan, or other plan or agreement approved by or entered into by the department, or in an amendment to such a permit, memorandum of understanding, plan, or agreement and all of the following conditions are met:

(a) The application process commenced on or before April 10, 1997.

(b) The department approved the permit, memorandum of understanding, plan, agreement, or amendment thereto within either of the following timeframes:

(A) On or before April 10, 1997.

(B) Between April 10, 1997, and January 1, 1998, and the department also certifies that the permit, memorandum of understanding, plan, agreement, or amendment thereto meets the substantive criteria of subdivision (b) of Section 2081.

The permits, memoranda of understanding, plan, agreements, and amendments thereto described in this section are deemed to be in full force and effect, as of the date approved or entered into by the parties insofar as they authorize the take of species. This section does not apply to the "Emergency Management Measures Permit" issued by the department on March 15, 1995.

2081.5. If an ongoing surface mining operation has been issued a permit pursuant to Section 2770 of the Public Resources Code by the lead agency, as defined in Section 2728 of the Public Resources Code, is in compliance with the permit with regard to matters relating to plants, and is in compliance with any memorandum of understanding with the department for any of the purposes specified in Section 2081 of this code, the following provisions shall apply:

(a) The surface mining operator is not liable for criminal prosecution pursuant to this code for any take of a threatened or endangered plant species that is incidental to the surface mining operation.

(b) If a plant species that exists on the private property of the surface mining operator is added to the list of threatened species or endangered species pursuant to this chapter after the date that the operator was issued the permit, or if a plant species on the list of threatened species or endangered species adopted pursuant to this chapter is newly discovered on the private property of the operator after that date, the department shall notify the operator by mail within 14 days of the addition to the list or knowledge of the new discovery by the department. Within 30 days from the date of the notification, the department shall meet with the operator to discuss an interim and permanent plan for the protection of the newly added or newly discovered plant species. Within 60 days of the initial meeting with the operator, the department shall issue reasonable and feasible interim management measures required to protect the newly added or newly discovered plant species that take into account the economic impact on the surface mining operation. The department shall work with the operator to develop and finalize a reasonable memorandum of understanding for one of the purposes specified in Section 2081 for the protection of the newly added or newly discovered plant species as expeditiously as possible. Both the interim management measures and the final memorandum of understanding shall, to the extent feasible, avoid interference with ongoing surface mining operations. The department shall send a copy of the final memorandum of understanding to the lead agency that issued the permit to the operator for the lead agency's information.

(c) The surface mining operator shall pay a fee to the department in the amount the department determines is necessary to pay the department's actual costs incurred in preparing interim management measures and developing and finalizing a memorandum of understanding for the protection of the newly added or newly discovered plant species. The fees shall be deposited in the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the department for purposes of implementing this section.

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.

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.

2082. This chapter does not prohibit the sale of any endangered species or threatened species, or any part or product thereof, when the owner can demonstrate that the species, or part or product thereof, was in the person's possession before the date upon which the commission listed the species as an endangered species or threatened species or as an endangered animal or rare animal prior to January 1, 1985, and shall not prohibit the sale of that part or product by an individual not normally engaged in that sale if it was originally possessed by the seller for the seller's own use and so used by that seller. However, it shall be unlawful to sell any species, or part or product thereof, if that sale would have been unlawful prior to the date upon which the commission added the species to the listing of endangered species or threatened species or to the listing of endangered animals or rare animals prior to January 1, 1985.

2083. This chapter does not apply to the taking of fish otherwise authorized pursuant to Part 3 (commencing with Section 7600) of Division 6 or to the possession of individual animals which were lawfully possessed before the commission listed the species as an endangered species or as a threatened species or as an endangered animal or rare animal prior to January 1, 1985.

2084. The commission may authorize, subject to terms and conditions it prescribes, the taking of any candidate species, or the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species.

2085. The provisions of this article shall apply to any species designated as a candidate species under Section 2074.2 if notice has been given pursuant to Section 2074.4.

FISH AND GAME CODE

SECTION 2930-2933

2930. This chapter shall be known and may be cited as the Salton Sea Restoration Act.

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.

2932. There is hereby established the Salton Sea Restoration Fund which shall be administered by the director. Money deposited in the fund shall be expended, upon appropriation by the Legislature, for the following purposes:

(a) Environmental and engineering studies related to the restoration of the Salton Sea and the protection of fish and wildlife dependent on the sea.

(b) Implementation of conservation measures necessary to protect the fish and wildlife species dependent on the Salton Sea, including adaptive management measurements pursuant to Section 2081.7. These conservation measures shall be limited to the Salton Sea and lower Colorado River ecosystems, including the Colorado River Delta.

(c) Implementation of the preferred Salton Sea restoration alternative.

(d) Administrative, technical, and public outreach costs related to the development and selection of the preferred Salton Sea restoration alternative.

2932.2. Of the funds appropriated pursuant to Section 79565 of the Water Code, not less than eight million five hundred thousand dollars

(\$8,500,000) shall be made available for transfer or direct expenditure for acquisition, grants, or other activities that directly restore the Salton Sea and its transboundary watersheds, consistent with Section 2932.

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.

2933. The Department of Water Resources may contract with water suppliers to purchase and sell water made available pursuant to Section 1745.02 of the Water Code to achieve the goals of this chapter.

FISH AND GAME CODE

SECTION 3500-3516

3500. Resident game birds are: Chinese spotted doves, ringed turtledoves of the family Columbidae, California quail and varieties thereof, Gambel or desert quail, mountain quail and varieties thereof, sooty or blue grouse and varieties thereof, ruffed grouse, sage hens and sage grouse, Hungarian partridges, red-legged partridges including the chukar and other varieties, ring-necked pheasants and varieties, and wild turkeys of the order Galliformes.

Migratory game birds are: ducks and geese, coots and gallinules, jacksnipe, western mourning doves, white-winged doves and band-tailed pigeons.

References in this code to "game birds" means both resident game birds and migratory game birds.

3501. It is unlawful to use any powerboat, motor vehicle, or airplane to drive any game bird toward another person with the intent that the other person shall take the bird.

3502. It is unlawful to use any mammal (except a dog) or an imitation of a mammal as a blind in approaching or taking game birds.

3503. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.

3503.5. It is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.

3504. Subject to the provisions of this code permitting the sale of domestically raised game birds, it is unlawful to sell or purchase any game bird or nongame bird or part thereof.

3505. It is unlawful to take, sell, or purchase any egret or egret, osprey, bird of paradise, gaura, numidi, or any part of such a bird.

3508. It is unlawful to break, train, hold field trials with, or practice dogs on any wild game bird or domesticated game bird during the closed season on that bird except as authorized by the commission.

3511. (a) (1) Except as provided in Section 2081.7, fully protected birds or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected bird, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of those species pursuant to a permit for the protection of livestock. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected birds or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

- (1) American peregrine falcon (*Falco peregrinus anatum*).
- (2) Brown pelican.
- (3) California black rail (*Laterallus jamaicensis coturniculus*).
- (4) California clapper rail (*Rallus longirostris obsoletus*).
- (5) California condor (*Gymnogyps californianus*).
- (6) California least tern (*Sterna albifrons browni*).
- (7) Golden eagle.
- (8) Greater sandhill crane (*Grus canadensis tabida*).
- (9) Light-footed clapper rail (*Rallus longirostris levipes*).
- (10) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).
- (11) Trumpeter swan (*Cygnus buccinator*).
- (12) White-tailed kite (*Elanus leucurus*).
- (13) Yuma clapper rail (*Rallus longirostris yumanensis*).

3513. It is unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act.

3514. Exotic nonresident game birds are those birds of the order Galliformes (pheasant, grouse, quail) which are not established as a wild resident population in this State.

3515. Exotic nonresident game birds may be released in this State only on prior approval of the commission.

3516. The commission may adopt such regulations as it deems necessary to govern the release, taking, and possession of exotic nonresident game birds.

The commission may adopt such regulations as it deems necessary to govern the inspection of resident game birds imported into this State.

FISH AND GAME CODE

SECTION 4700

4700. (a) (1) Except as provided in Section 2081.7, fully protected mammals or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

(2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (*Mirounga angustirostris*).

(4) Guadalupe fur seal (*Arctocephalus townsendi*).

(5) Ring-tailed cat (genus *Bassariscus*).

(6) Pacific right whale (*Eubalaena sieboldi*).

(7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).

(8) Southern sea otter (*Enhydra lutris nereis*).

(9) Wolverine (*Gulo luscus*).

FISH AND GAME CODE

SECTION 5050

5050. (a) (1) Except as provided in Section 2081.7, fully protected reptiles and amphibians or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected reptile or amphibian, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected reptiles or amphibians or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (*Crotaphytus wislizenii silus*).

(2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

(3) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

(4) Limestone salamander (*Hydromantes brunus*).

(5) Black toad (*Bufo boreas exsul*).

FISH AND GAME CODE

SECTION 5500-5522

5500. It is unlawful to use explosives in the waters of this state inhabited by fish, except under a permit first obtained by the user from the department consistent with terms and conditions set by the commission, or except in case of emergency, to remove an accidental obstruction to the flow of water. Any person may appeal the department's decision to grant or deny a permit to the commission.

5501. The department may take any fish which, in its opinion, is unduly preying upon any bird, mammal, or fish. The commission may prescribe the terms of a permit to take any fish which, in the opinion of the department, is harmful to other species of fish and which should be reduced in numbers.

5502. It is unlawful to take any fish within 250 feet of any fishway, within 150 feet of the lower side of any dam, or within 150 feet of the upper side of any fish screen.

5503. It is unlawful to take any fish for the sole purpose of removing its eggs except for the purpose of developing a brood stock for aquaculture purposes under Division 12 (commencing with Section 15000) pursuant to regulations promulgated by the Fish and Game Commission.

The commission shall also determine ownership and regulate distribution of progeny taken from wild brood stock, other than those obtained pursuant to Section 15300.

5505. Mollusks, crustaceans, and amphibia may be used for bait or released in the same waters wherein taken.

5507. It is unlawful for any person to possess, except in his home, any fish spear or gaff within 300 feet of any lake or stream in this State, at any time when spearing is prohibited in such lake or stream. This section does not apply to the possession of a gaff carried as an accessory while angling.

5508. It is unlawful to possess on any boat or to bring ashore any fish upon which a size or weight limit is prescribed in such a condition that its size or weight cannot be determined.

The commission may adopt regulations, under which fish other than whole fish may be brought ashore, which establish sizes or weights for cleaned or otherwise cut fish equivalent to sizes or weights for whole fish.

5509. It is unlawful to possess on any boat or to bring ashore any fish in such a condition that the species cannot be determined, except as otherwise provided in this code or regulations adopted pursuant thereto. The commission, subject to the provisions of Section 5508, may adopt regulations whereby fish taken by persons fishing from a vessel licensed pursuant to Section 7920 may be brought ashore in such a condition that the species cannot be determined.

5510. The commission may adopt regulations to prevent deterioration and waste of fish taken for purposes other than profit, and to regulate the disposal of the offal of such fish.

5511. Except under permit of the department, it is unlawful to carry on any fish cultural operations on any stream above the point where water is diverted for the use and operation of a state fish hatchery.

5514. In any district or part of a district in Butte County, it is unlawful to kill or retain in possession any king, silver or kokanee salmon or any steelhead which has not taken the bait or lure in its mouth.

In this area, any king, silver or kokanee salmon or any steelhead hooked other than in its mouth shall be released unharmed.

5515. (a) (1) Except as provided in Section 2081.7, fully protected fish or parts thereof may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected fish, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an e-mail address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide any relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) Legally imported fully protected fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

(1) Colorado River squawfish (*Ptychocheilus lucius*).

(2) Thicktail chub (*Gila crassicauda*).

(3) Mohave chub (*Gila mohavensis*).

- (4) Lost River sucker (*Catostomus luxatus*).
- (5) Modoc sucker (*Catostomus microps*).
- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens River pupfish (*Cyprinoden radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

5516. Any river, stream, lake, or other body of water restricted by the commission to the use of artificial flies or artificial lures only for fishing shall be posted by the department at logical places of entry so as to inform persons fishing in such waters as to the nature of the restrictions.

5517. It is unlawful to take any white shark (*Carcharodon carcharias*), except under permits issued pursuant to Section 1002 for scientific or educational purposes.

5520. It is the intent of the Legislature that the commission undertake management of abalone in a manner consistent with the abalone recovery and management plan submitted pursuant to Section 5522.

5521. A moratorium is imposed on the taking, possessing, or landing of abalone (genus *Haliotis*) for commercial or recreational purposes in ocean waters of the state south of a line drawn due west magnetic from the center of the mouth of the San Francisco Bay, including all islands offshore the mainland of California, including, but not limited to, the Farallon Islands and the Southern California Channel Islands. It is unlawful to take, possess, or land abalone for commercial or recreational purposes in those ocean waters while the moratorium is in effect.

5521.5. (a) In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17, or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) There shall be a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license pursuant to Section 7145 and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit possesses the abalone for commercial purposes.

5521.6. Notwithstanding Sections 5521 and 5521.5, a registered aquaculturist may collect abalone for broodstock, in accordance with subdivision (b) of Section 15301.

5522. (a) On or before January 1, 2003, the department shall submit

to the commission a comprehensive abalone recovery and management plan. The plan shall contain all of the following:

(1) An explanation of the scientific knowledge regarding the biology, habitat requirements, and threats to abalone.

(2) A summary of the interim and long-term recovery goals, including a range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the recommended activities.

(3) Alternatives for allocating harvest between sport and commercial divers if the allocation of the abalone harvest is warranted.

(4) An estimate of the time and costs required to meet the interim and long-term recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting the final recovery goals. An implementation schedule shall also be included.

(5) An estimate of the time necessary to meet the interim recovery goals and triggers for review and amendment of strategy.

(6) A description of objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery. These criteria and procedures shall include, but not be limited to, the following:

(A) Specified abundance and size frequency distribution criteria for former abalone beds within suitable habitat not dominated by sea otters.

(B) Size frequency distributions exhibiting multiple size classes as necessary to ensure continued recruitment into fishable stock.

(C) The reproductive importance to the entire ecosystem of those areas proposed for reopening to harvest and the potential impact of each reopening on the recovery of abalone population in adjacent areas.

(b) Where appropriate, the recovery and management plan may include the following:

(1) A network of no-take abalone reserves.

(2) A total allowable catch, reflecting the long-term yield each species is capable of sustaining, using the best available science and bearing in mind the ecological importance of the species and the variability of marine ecosystems.

(3) A permanent reduction in harvest.

(c) Funding to prepare the recovery and management plan and any planning and scoping meetings shall be derived from the fees collected for the abalone stamp.

(d) On or before January 1, 2008, and following the adoption of the recovery and management plan by the commission, the department may apply to the commission to reopen sport or commercial fishing in all or any portion of the waters described in Section 5521. If the commission makes a finding that the resource can support additional harvest activities and that these activities are consistent with the abalone recovery plan, all or a portion of the waters described in Section 5521 may be reopened and management measures prescribed and implemented, as appropriate. The commission may close or, where appropriate, may establish no-take marine refuges in any area opened pursuant to this section if it makes a finding that this action is necessary to comply with the abalone management plan.

(e) If the commission determines that commercial fishing is an appropriate management measure, priority for participation in the

fishery shall be given to those persons who held a commercial abalone permit during the 1996-97 permit year.

Excerpts from the Water Code

WATER CODE

SECTION 1000-1017

1000. As used in this division, "water" includes the term "use of water."

1001. Nothing in this division shall be construed as giving or confirming any right, title, or interest to or in the corpus of any water.

1002. This division shall not be held to bestow upon any person, except as expressly provided in it, any right where no such right existed prior to the time this division takes effect.

1003. As used in this division, "Water Commission Act" means Chapter 586, Statutes of 1913, as amended.

1004. As used in this division, "useful or beneficial purposes" shall not be construed to mean the use in any one year of more than 21/2 acre-feet of water per acre in the irrigation of uncultivated areas of land not devoted to cultivated crops.

1005. Nothing in this division shall be construed as depriving any city, city and county, municipal water district, irrigation district, or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water. Any right to the water of any stream which flows along a boundary of the State and which is the subject of an interstate compact to which the State is a party, to the extent such right relates to quantities of water which the United States has, under the authority of an act of Congress, contracted to deliver to any municipal corporation, political subdivision, or public district in the State, from storage constructed by the United States on any such stream, shall not be subject to any requirement or limitation provided by law relating to the time within which the construction of works for the use of such water shall be commenced, carried on, or completed, or within which such water shall be put to use, or relating to the continuity of use of such water; and water contracted to be delivered from such stream, shall be reserved to the contractor therefor without diminution by reason of the contractor's failure to apply such water to use during any period, and shall not be subject to appropriation by any other than such contractor.

1005.1. Cessation of or reduction in the extraction of ground water by the owner of a right to extract, as the result of the use of an alternate supply of water from a nontributary source, shall be and is deemed equivalent to, and for purposes of establishing and

maintaining any right to extract the ground water shall be construed to constitute, a reasonable beneficial use of the ground water to the extent and in the amount that water from the alternate source is applied to reasonable beneficial use, not exceeding, however, the amount of such reduction. Any such user of water from an alternate nontributary source who seeks the benefit of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of water from such source so applied to reasonable beneficial use pursuant to the provisions of this section during the next preceding water year (November 1st to October 31st), and such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

"Ground water," for the purpose of this section and of Sections 1005.2 and 1005.4, means water beneath the surface of the ground, whether or not flowing through known and definite channels.

The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1005.2. Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction.

No lapse, reduction or loss of any right in ground water, shall occur under such conditions. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to the use of such water occurring prior to the effective date of this section, shall file with the board, within ninety (90) days from said effective date, a statement of the amounts of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use prior to said effective date to permit the replenishment of such ground water and said amounts shall be segregated and shown for each water year (November 1st to October 31st) during which such use occurred prior to the effective date of this section. Any such user of water from an alternate source who seeks the benefit of this Section 1005.2 with respect to the use of such water occurring subsequent to the effective date of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of ground water as the result of water from said alternate source having been so applied to reasonable beneficial use during the next preceding water year (November 1st to October 31st) to permit the replenishment of such ground water. Such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of the Counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

The term "nontributary source" as used in this section shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1005.3. During the pendency of an action to adjudicate substantially all water rights in a ground water basin situated in whole or in part within the Tehachapi-Cummings County Water District in Kern County, and until the date of judgment therein becomes final, which finality may be subject to any reserved jurisdiction of the court, the failure by any owner of water rights in and to such ground water basin to pump or extract therefrom the full quantity of water representing such water rights which he may be determined to have had as of the date of commencement of the action, shall not result in a loss of any portion of such water rights. The provisions of this section shall apply to any such failure to pump or extract in any water year, calendar year, or other year ending after the effective date of this section, whether or not said action was commenced prior to that effective date.

This special provision is necessary because there are special and peculiar circumstances applicable to the ground water basins lying wholly or partially within the Tehachapi-Cummings County Water District. There are three such ground water basins, commonly referred to as the Tehachapi Basin, the Brite Basin and the Cummings Basin. The alluvial fill in each of said basins is very shallow when contrasted to most other ground water basins in this state. It is necessary to induce those pumpers who can possibly do so to reduce their pumping from the basins if sufficient ground water reserves are to be maintained for preservation of the existing economy until supplemental water is available from the State Water Facilities. Actions to adjudicate substantially all water rights have been filed as to each of those basins.

1005.4. (a) Cessation of or reduction in the extraction of ground water, to permit the replenishment of such ground water by the use of water from an alternate nontributary source, is hereby declared to be a reasonable beneficial use of the ground water to the extent and in the amount that water from such alternate source is applied to beneficial use, not exceeding, however, the amount of such reduction.

No lapse, reduction or loss of any right in ground water, shall occur under such conditions.

(b) Any such user of water from an alternative source may file with the board, on or before December 31st of each calendar year, a statement of the amount of reduction in the extraction of groundwater as a result of water from the alternative source having been so applied to reasonable beneficial use during the next preceding water year (October 1st to September 30th) to permit replenishment of such groundwater. However, failure to file such a statement shall in no way affect the right of a user to claim the benefit of this section.

(c) The provisions of this section apply only as to the cessation of, or reduction in, the extraction of ground water within that area in this state defined by the exterior boundaries of every county, except the Counties of San Luis Obispo, Santa Barbara, Ventura, Los

Angeles, Orange, San Diego, Imperial, Riverside, and San Bernardino.

(d) The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

1006. Nothing in this division affects or limits in any manner whatsoever the right or power of any municipality which, prior to December 19, 1914, had appropriated or acquired water for municipal purposes, to use, sell, or otherwise dispose of such water either within or without its limits for domestic, irrigation, or other purposes in accordance with laws in effect on that date.

1007. Nothing in this division shall be construed to deprive the State or any city, city and county, municipal water district, irrigation district, lighting district, political subdivision, or any person of any rights to acquire property by eminent domain proceedings.

1008. Nothing in this division shall be construed as depriving any person of the right of appeal conferred under the laws of this State.

1009. Any supplier of water in this state for municipal use, including the state, or any city, county, city and county, district, individual, partnership, corporation, or any other entity, may undertake a water conservation program to reduce water use and may require, as a condition of new service, that reasonable water-saving devices and water reclamation devices be installed to reduce water use.

1009.5. (a) A water district and the district attorney of any county in which the water district is located may enter into an agreement authorizing the attorney for the water district to act as a special prosecutor appointed by and under the supervision and direction of the district attorney for the purpose of prosecuting a violation of an ordinance of the district or a violation of a statute that is a misdemeanor or an infraction, or a violation of a resolution or ordinance adopted pursuant to Section 375, subject to all of the following limitations:

(1) The ordinance, resolution, or statute relates to water pollution, including waste water and stormwater, or to water conservation.

(2) The district attorney shall prescribe the scope of, and any limitations on, the subpoena power of the attorney for the water district.

(3) The district attorney may designate any ordinance, resolution, or statute that the attorney for the water district is authorized to prosecute.

(b) A water district, for purposes of this section, means a water district as defined in Section 20200.

1010. (a) (1) The cessation of, or reduction in, the use of water under any existing right regardless of the basis of right, as the result of the use of recycled water, desalinated water, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses, is deemed equivalent to, and for purposes of maintaining any right shall be construed to constitute, a reasonable beneficial use of water to the extent and in the amount that the recycled, desalinated, or polluted water is being used not exceeding, however, the amount of such reduction.

(2) No lapse, reduction, or loss of any existing right shall occur under a cessation of, or reduction in, the use of water pursuant to this subdivision, and, to the extent and in the amount that recycled, desalinated, or polluted water is used in lieu of water appropriated by a permittee pursuant to Chapter 6 (commencing with Section 1375) of Part 2, the board shall not reduce the appropriation authorized in the user's permit.

(3) The use of recycled, desalinated, or polluted water constitutes good cause under Section 1398 to extend the period specified in a permit for application of appropriated water to beneficial use to the extent and in the amount that recycled, desalinated, or polluted water is used. The extension by the board shall be granted upon the same terms as are set forth in the user's permit, and for a period sufficient to enable the permittee to perfect his appropriation, while continuing to use recycled, desalinated, or polluted water.

(4) The board, in issuing a license pursuant to Article 3 (commencing with Section 1610) of Chapter 9 of Part 2, shall not reduce the appropriation authorized by permit, to the extent and in the amount that reduction in a permittee's use, during the perfection period, including any extension as provided in this section, has resulted from the use of recycled, desalinated, or polluted water in lieu of the permittee's authorized appropriation.

(5) The board may require any user of water who seeks the benefit of this section to file periodic reports describing the extent and amount of the use of recycled, desalinated, or polluted water. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water.

(6) For purposes of this section, the term "recycled water" has the same meaning as in Division 7 (commencing with Section 13000).

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

1011. (a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water

conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

For purposes of this section, the term "water conservation" shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used as a result of temporary land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section. For the purpose of this section, "land fallowing" and "crop rotation" mean those respective land practices, involving the nonuse of water, used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

1011.5. (a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the

lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets one of the following conditions:

(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No. 118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:

(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.

(B) The groundwater management program establishes requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).

(C) The joint powers authority includes one or more of the water agencies overlying the contemplated points of groundwater extraction and one or more of the water agencies that will share in the benefits to be derived from the local groundwater management program.

(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction:

(i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction.

(ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.

(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater

pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

1012. Notwithstanding any other provision of law, where any person, public agency, or agency of the United States undertakes any water conservation effort, either separately or jointly with others entitled to delivery of water from the Colorado River under contracts with the United States, which results in reduced use of Colorado River water within the Imperial Irrigation District, no forfeiture, diminution, or impairment of the right to use the water conserved shall occur, except as set forth in the agreements between the parties and the United States.

1013. (a) The Imperial Irrigation District, acting under a contract with the United States for diversion and use of Colorado River water or pursuant to the California Constitution or to this chapter, or complying with an order of the Secretary of the Interior, a court, or the board, to reduce through conservation measures, the volume of the flow of water directly or indirectly into the Salton Sea, shall not be held liable for any effects to the Salton Sea or its bordering area resulting from the conservation measures.

(b) For the purposes of this section, and during the term of the Quantification Settlement Agreement as defined in subdivision (a) of Chapter 617 of the Statutes of 2002, "land fallowing conservation measures" means the generation of water to be made available for transfer or for environmental mitigation purposes by fallowing land or removing land from agricultural production regardless of whether the fallowing or removal from agricultural production is temporary or long term, and regardless of whether it occurs in the course of normal and customary agricultural production, if both of the following apply:

(1) The measure is part of a land fallowing conservation plan that includes mitigation provisions adopted by the Board of Directors of the Imperial Irrigation District.

(2) Before the Imperial Irrigation District adopts a land fallowing conservation plan, the district shall consult with the Board of Supervisors of the County of Imperial and obtain the board's assessment of whether the proposed land fallowing conservation plan includes adequate measures to avoid or mitigate unreasonable economic or environmental impacts in the County of Imperial.

(c) In order to minimize impacts on the environment, during the term of the Quantification Settlement Agreement and for six years thereafter, in any evaluation or assessment of the Imperial Irrigation District's use of water, it shall be conclusively presumed that any water conserved, or used for mitigation purposes, through

land following conservation measures has been conserved in the same volume as if conserved by efficiency improvements, such as by reducing canal seepage, canal spills, or surface or subsurface runoff from irrigation fields.

(d) If a party to the Quantification Settlement Agreement engages in water efficiency conservation measures or land following conservation measures to carry out a Quantification Settlement Agreement transfer or to mitigate the environmental impacts of a Quantification Settlement Agreement transfer, there may be no forfeiture, diminution, or impairment of the right of that party to use of the water conserved.

(e) During the period that the Quantification Settlement Agreement is in effect and the Imperial Irrigation District is meeting its water delivery obligations under the Quantification Settlement Agreement and its water delivery obligations under subdivision (c) of Section 2081.7 of the Fish and Game Code, no person or local agency, as defined in Section 21062 of the Public Resources Code, may seek to obtain additional conserved Colorado River water from the district, voluntarily or involuntarily, until the district has adopted a resolution offering to make conserved Colorado River water available.

(f) During the initial term in which the Quantification Settlement Agreement is in effect, any water transferred by the Imperial Irrigation District shall be subject to an ecosystem restoration fee established by the Department of Fish and Game, in consultation with the board, to cover the proportional impacts to the Salton Sea of the additional water transfer. The fee shall not exceed 10 percent of the amount of any compensation received for the transfer of the water. The fee shall be deposited in the Salton Sea Restoration Fund. This fee shall not apply to the following transfers:

(1) Transfers to meet water delivery obligations under the Quantification Settlement Agreement and related agreements, as defined in that agreement.

(2) Transfers to comply with subdivision (c) of Section 2081.7 of the Fish and Game Code.

(3) Transfers pursuant to a Defensive Transfer Agreement as defined in the Agreement for Acquisition of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California.

(g) Subdivisions (c), (d), (e), and (f) shall not become operative unless the parties have executed the Quantification Settlement Agreement on or before October 12, 2003.

(h) This section may not be construed to exempt the Imperial Irrigation District from any requirement established under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

1014. The transfer of water, or the offer of water for transfer, shall not cause, or be the basis for, a forfeiture, abandonment, or modification of any water right, contract right, or other right to the use of that water. An offer of water for transfer, contract negotiations, or a transfer agreement shall not be used as evidence of waste or unreasonable use, or of cessation of use, of the water made available for transfer.

1015. During the term of a temporary change, as defined in Section 1728, if an enforcement action or other proceeding is commenced that alleges that the use of water violates Section 2 of Article X of the California Constitution, Sections 100, 101, 1410, and 1675, or any other legislative, administrative, or judicial limitation on the water that is subject to that water transfer and the water involved is, at the time of the alleged violation, subject to a water transfer, the determination of the alleged violation shall be based on an assessment of the transferee's use of transferred water. If a transferee's right to use transferred water is divested, in whole or in part, on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use of the transferred water, the divested portion of the right shall revert immediately to the transferor.

1016. (a) At the conclusion of the term of a water transfer agreement, all rights in, and the use of, the water subject to the agreement revert back to the transferor.

(b) After the conclusion of the term of a water transfer agreement, the transferee or any beneficiary of the transfer shall not do either of the following:

(1) Bring any claim for a continuation of the water supply made available by the agreement.

(2) Claim any right to a continued supply of water as a result of the transfer, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increases in demand, or any other cause.

1017. The beneficial use of water pursuant to a transfer or exchange authorized pursuant to Chapter 6.6 (commencing with Section 1435) of, Chapter 10 (commencing with Section 1700) of, Chapter 10.5 (commencing with Section 1725) of, Part 2, or any other provision of law, shall constitute a beneficial use of water by the holder of the permit, license, water right, or other entitlement for use that is the basis for the transfer or exchange, and shall not affect any determination or forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

WATER CODE

SECTION 12560-12565

12560. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) "Account" means the Colorado River Management Account created pursuant to Section 12561.

(b) "California Plan" means the plan being developed by the Colorado River Board of California, the public agencies represented on that board, and the director to ensure that California can live within the state's apportionment of Colorado River water.

12561. There is hereby created the Colorado River Management Account in the General Fund. Notwithstanding Section 13340 of the Government Code, the sum of two hundred thirty-five million dollars (\$235,000,000) is hereby continuously appropriated from the General Fund to the account, without regard to fiscal years, for use in accordance with this chapter.

12562. (a) (1) In furtherance of implementing and achieving the goals of the "California Plan," the sum of two hundred million dollars (\$200,000,000) in the account shall be used by the director to finance and arrange for lining portions of the All American Canal and the Coachella Branch of the All American Canal.

(2) The canal lining projects shall be completed not later than December 31, 2008, or such later date as may be required by extraordinary circumstances.

(3) The allocation of the water conserved from the canal lining projects and to be made available to the Metropolitan Water District of Southern California shall be consistent with federal law and shall be determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the director and the United States Secretary of the Interior.

(b) (1) The sum of thirty-five million dollars (\$35,000,000) from the account shall be used by the director to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the "California Plan."

(2) Water stored in connection with the groundwater conjunctive use programs described in paragraph (1) shall be for the benefit of the member public agencies of the Metropolitan Water District of Southern California.

(3) Nothing in this subdivision limits the ability of the Metropolitan Water District of Southern California to enter into agreements regarding the sharing of any water made available under this subdivision.

(c) The Legislature finds that the extension of the date from December 31, 2006, to December 31, 2008, for completing the canal project linings under paragraph (2) of subdivision (a) during the

2003 portion of the 2003-04 Regular Session is required due to extraordinary circumstances. The Legislature finds that there have been unforeseen construction delays, contract award delays, and changed conditions requiring design modifications for lining the All American Canal and the Coachella Branch of the All American Canal, and that these circumstances are extraordinary.

12563. If the contingencies for a transfer to the San Diego County Water Authority of the conserved water under the water transfer agreement entered into by the Imperial Irrigation District and the San Diego County Water Authority on April 29, 1998, have not been satisfied in full prior to December 31, 2006, any recipient of the water made available under the agreement described in subdivision (a) of Section 12562, other than the San Luis Rey settlement parties, shall pay to the state, if required by statute, a portion of the funding made available under subdivision (a) of Section 12562, in an amount to be determined by the statute.

12564. Nothing in the contract anticipated by the memorandum of understanding entered into on August 12, 1998, by the Metropolitan Water District of Southern California and the San Diego County Water Authority shall affect the authority of the Legislature to allocate, by statute, or reallocate water if the contingencies for a transfer of the conserved water to the San Diego County Water Authority under the water transfer agreement entered into by the Imperial Irrigation District and the San Diego County Water Authority on April 29, 1998, have not been satisfied in full prior to December 31, 2006.

12565. The two hundred million dollars (\$200,000,000) made available to the director pursuant to subdivision (a) of Section 12562 may be expended solely for the lining of the All American Canal and the Coachella Branch of the All American Canal and only if all of the following requirements have been met:

(a) The Salton Sea Authority commissions a study of seepage and subsurface inflows to the Salton Sea from the All American Canal and the Coachella Branch of the All American Canal, and that study is completed. The study shall determine the nature of subsurface and drainage canal water movements from the unlined canals to the Salton Sea and to existing adjacent wetlands, and shall quantify the amount of water that may be lost to the Salton Sea and to those wetlands due to the canal lining projects. The Salton Sea Science Subcommittee shall review the requests for proposals for the study and shall be consulted in selecting the contractor responsible for conducting the study.

(b) Environmental documentation and permits required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the National Environmental Policy Act of 1969 (42 U.S.C.A. Sec. 4321 et seq.), and any other applicable state and federal environmental laws are approved and certified for the All American Canal Lining Project or the Coachella Branch Lining Project.

(c) Pursuant to its responsibilities as a trustee agency under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the Director of Fish

and Game makes a finding that a canal lining project that is the subject of a request for funding pursuant to this chapter will avoid or mitigate all significant effects of the project on fisheries and other wildlife. The finding shall be accompanied by a statement from the United States Secretary of the Interior certifying that measures for the replacement of incidental fish and wildlife values adjacent to the All American Canal and the Coachella Branch of the All American Canal foregone as a result of the lining of the canal, or the mitigation of resulting impacts on fish and wildlife resources from the construction of a new canal, or a portion thereof, meet the statutory requirements of Section 203(a)(2) of Public Law 100-675. These mitigation measures shall be on an acre-for-acre basis, based on ecological equivalency, and shall be implemented concurrent with the construction of the canal lining project.

WATER CODE

SECTION 22750-22762

22750. In all controversies involving any damage to any and all water rights of any land which is heretofore or hereafter tax-sold or tax-deeded to the State, the State disclaims any interest in the controversy and authorizes the district within which the land is situated to make a final settlement of the controversy.

22751. The damages claimed in a controversy defined by this article are those occurring prior to the execution of the tax deed to the State.

22752. The money collected in the settlement pursuant to this article shall be paid into the treasury of the district for district purposes and be apportioned to any funds the board deems advisable.

22753. The settlement of a controversy defined by this article shall be upon terms satisfactory to the district.

22754. The tax title of the State to the land involved remains wholly unimpaired by proceedings had pursuant to this article.

22762. An action to determine the validity of the Quantification Settlement Agreement defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, or any action regarding a contract entered into that implements, or is referenced in, that Quantification Settlement Agreement, may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.