

105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 105-621  
2d Session } Part 1

SONNY BONO MEMORIAL SALTON SEA RECLAMATION ACT

JULY 14, 1998.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3267]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3267) to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a feasibility study and construct a project to reclaim the Salton Sea, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Sonny Bono Memorial Salton Sea Reclamation Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—SALTON SEA RECLAMATION PROJECT

- Sec. 101. Salton Sea Reclamation Project authorization.
- Sec. 102. Concurrent wildlife resources studies.
- Sec. 103. Salton Sea National Wildlife Refuge renamed as Sonny Bono Salton Sea National Wildlife Refuge.
- Sec. 104. Relationship to other laws and agreements governing the Colorado River.

TITLE II—EMERGENCY ACTION TO IMPROVE WATER QUALITY IN THE ALAMO RIVER AND NEW RIVER

- Sec. 201. Alamo River and New River irrigation drain water.

SEC. 2. FINDINGS.

The Congress finds the following:

59-006

(1) The Salton Sea, located in Imperial and Riverside Counties, California, is an economic and environmental resource of national importance.

(2) The Salton Sea is critical as—

(A) a reservoir for irrigation, municipal, and stormwater drainage; and

(B) a component of the Pacific flyway.

(3) Reclaiming the Salton Sea will provide national and international benefits.

(4) The Federal, State, and local governments have a shared responsibility to assist in the reclamation of the Salton Sea.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) The term "Project" means the Salton Sea reclamation project authorized by section 101.

(2) The term "Salton Sea Authority" means the Joint Powers Authority by that name established under the laws of the State of California by a Joint Power Agreement signed on June 2, 1993.

(3) The term "Secretary" means the Secretary of the Interior, acting through the Bureau of Reclamation.

## TITLE I—SALTON SEA RECLAMATION PROJECT

#### SEC. 101. SALTON SEA RECLAMATION PROJECT AUTHORIZATION.

(a) IN GENERAL.—The Secretary, in accordance with this section, shall undertake a project to reclaim the Salton Sea, California.

(b) PROJECT REQUIREMENTS.—The Project shall—

(1) reduce and stabilize the overall salinity of the Salton Sea;

(2) stabilize the surface elevation of the Salton Sea;

(3) reclaim, in the long term, healthy fish and wildlife resources and their habitats;

(4) enhance the potential for recreational uses and economic development of the Salton Sea; and

(5) ensure the continued use of the Salton Sea as a reservoir for irrigation drainage.

(c) FEASIBILITY STUDY.—

(1) IN GENERAL.—(A) The Secretary shall promptly initiate a study of the feasibility of various options for meeting the requirements set forth in subsection (b). The purpose of the study shall be to select 1 or more practicable and cost-effective options and to develop a reclamation plan for the Salton Sea that implements the selected options.

(B)(i) The Secretary shall carry out the feasibility study in accordance with a memorandum of understanding entered into by the Secretary, the Salton Sea Authority, and the Governor of California.

(ii) The memorandum of understanding shall, at a minimum, establish criteria for evaluation and selection of options under subparagraph (A), including criteria for determining the magnitude and practicability of costs of construction, operation, and maintenance of each option evaluated.

(2) OPTIONS TO BE CONSIDERED.—Options considered in the feasibility study—

(A) shall consist of—

(i) use of impoundments to segregate a portion of the waters of the Salton Sea in 1 or more evaporation ponds located in the Salton Sea basin;

(ii) pumping water out of the Salton Sea;

(iii) augmented flows of water into the Salton Sea;

(iv) a combination of the options referred to in clauses (i), (ii), and (iii); and

(v) any other economically feasible remediation option the Secretary considers appropriate;

(B) shall be limited to proven technologies; and

(C) shall not include any option that—

(i) develops or promotes an ongoing reliance on Colorado River water;

or

(ii) is inconsistent with section 104 (b) or (c).

(3) PROJECT DESIGN CALCULATIONS.—In making Project design calculations, the Secretary shall apply assumptions regarding water inflows into the Salton Sea Basin that—

- (A) encourage water conservation;
  - (B) account for transfers of water out of the Salton Sea Basin;
  - (C) are based on the maximum likely reduction in inflows into the Salton Sea Basin; and
  - (D) include the assumption that inflows into the Salton Sea Basin could be reduced to 800,000 acre-feet or less per year.
- (4) **CONSIDERATION OF COSTS.**—In evaluating the feasibility of options, the Secretary shall consider the ability of Federal, tribal, State and local government sources and private sources to fund capital construction costs and annual operation, maintenance, energy, and replacement costs. In that consideration, the Secretary may apply a cost sharing formula to annual operation, maintenance, energy, and replacement costs that is different than the formula that applies to construction costs under subsection (e).
- (5) **REPORT AND PLAN.**—Not later than 18 months after commencement of the feasibility study under this subsection, the Secretary shall—
- (A) submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings and recommendations of the feasibility study, including—
    - (i) the reclamation plan for the Salton Sea pursuant to paragraph (1), including a cost sharing formula for operation and maintenance; and
    - (ii) complete specifications of the construction activities to be carried out under subsection (e), that are sufficient to use for soliciting bids for those activities, including professional engineering and design specifications and drawings and professional engineer cost estimates; and
  - (B) complete all environmental compliance and permitting activities required for those construction activities.
- (d) **CONGRESSIONAL REVIEW AND REVISION OF PLAN.**—
- (1) **REVIEW.**—After receipt of the report of the Secretary under subsection (c)(5), each of the Committees shall—
    - (A) approve or disapprove the reclamation plan included in the report;
    - (B) amend such plan and approve it, as amended; or
    - (C) return the plan to the Secretary with such recommended changes as the committee considers appropriate.
  - (2) **REVISION.**—After receipt of recommendations under paragraph (1)(C) from a committee, the Secretary shall revise and resubmit the reclamation plan to the Committees.
- (e) **CONSTRUCTION.**—
- (1) **INITIATION.**—Upon approval of a reclamation plan by the Committees and subject to paragraph (2) of this subsection and the availability of appropriations, the Secretary shall initiate construction of the Project.
  - (2) **COST SHARING.**—The Federal share of the costs of construction of the Project shall not exceed 50 percent of the total cost of that construction.
  - (3) **COST SHARING AGREEMENT.**—The Secretary may not initiate construction of the Project unless the Secretary, the Governor of California, and the Salton Sea Authority enter into an agreement that—
    - (A) adopts the cost sharing formula for annual operation, maintenance, energy, and replacement costs that is included in the reclamation plan approved by the Committees under subsection (d); and
    - (B) implements the cost sharing requirement under paragraph (2) of this subsection for construction costs.
  - (4) **LIMITATION ON EXPENDITURE OF FEDERAL FUNDS.**—No Federal funds may be expended for any construction activity under the Project unless there are available to the Secretary from non-Federal sources amounts sufficient to pay the non-Federal share of the cost of the activity.
- (f) **RELATIONSHIP TO OTHER LAW.**—
- (1) **RECLAMATION LAWS.**—Activities authorized by this Act or any other law to implement the Project shall not be subject to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391 et seq.), and Acts amendatory thereof and supplemental thereto. Amounts expended for those activities shall be considered non-reimbursable for purposes of those laws. Activities carried out to implement the Project and the results of those activities shall not be considered to be a supplemental or additional benefit for purposes of the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa et seq.).
  - (2) **PRESERVATION OF RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLORADO RIVER.**—This Act shall not be considered to supersede or otherwise affect any treaty, law, or agreement governing use of water from the Colorado River. All activities to implement the Project under this Act must be carried out in

a manner consistent with rights and obligations of persons under those treaties, laws, and agreements.

(3) JUDICIAL REVIEW.—Any complaint or challenge of any decision, action, or authorization taken pursuant to this Act shall be filed in a United States district court within 30 days following the date of the decision, action, or the authorization. Such court shall have jurisdiction to resolve any complaint or challenge in accordance with chapter 7 of title 5, United States Code, except that the court shall expedite its review as necessary to ensure that remedial actions at the Salton Sea are not unduly or inappropriately delayed. In connection with expediting judicial review, the court shall not delay ruling upon a request for a temporary restraining order or preliminary injunction for more than 30 days after the date of the filing of such request. If a temporary restraining order or preliminary injunction is entered into by a court, the court shall proceed to a final judgment in the matter within 90 days thereafter.

(4) LIMITATION ON LIABILITY.—(A) In regard to any actions, programs, or projects implemented by the Secretary under the authority of this Act, the Imperial Irrigation District and Coachella Valley Water District shall not be liable for any damages arising from—

- (i) enlargement of the Salton Sea and the encroachment of water onto adjacent lands;
- (ii) reduction of the elevation of the Salton Sea, including exposure of lakebed sediments to the environment; or
- (iii) any other occurrence which might result in a claim of damage by any owner of property adjacent to the Salton Sea or any other person.

(B) No person, including the Imperial Irrigation District, California, the Coachella Valley Water District, California, the Salton Sea Authority, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, but not including the Government of the United States, shall be liable for damages arising from any effects to the Salton Sea or its bordering area resulting from—

- (i) cooperation with the Secretary in regard to any actions, programs, or projects implemented pursuant to this Act;
- (ii) any action to comply with an order of the Secretary under this Act, a State or Federal court, or a State or Federal administrative or regulatory agency interpreting this Act; or
- (iii) any other action that reduces the volume of water that flows directly or indirectly into the Salton Sea.

(C) This title shall not be construed to exempt any person, including the Imperial Irrigation District, California, the Coachella Valley Water District, California, the Salton Sea Authority, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, from—

- (i) any requirements established under the California Environmental Quality Act or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or
- (ii) any obligations otherwise imposed by law.

(D) The limitation on liability of the United States contained in section 3 of the Act entitled "An Act For the control of floods on the Mississippi River and its tributaries, and for other purposes", approved May 15, 1928 (chapter 569; 33 U.S.C. 702c), shall not apply to surplus flood flows that are diverted to the Salton Sea pursuant to this Act.

(g) COMMITTEES DEFINED.—In this section, the term "Committees" means the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out the Project the following:

(A) For the feasibility study under subsection (c), including preparation and any revision of the reclamation plan under subsections (c) and (d), and completion of environmental compliance and permitting required for construction of the Project, \$22,500,000.

(B) For construction of the Project in accordance with a reclamation plan approved by the Committees, \$350,000,000.

(2) ALLOCATION OF APPROPRIATIONS.—Amounts authorized under paragraph (1)(B) may be appropriated to the Administrator of the Environmental Protection Agency or the Secretary of the Interior (or any combination thereof).

(3) APPROPRIATIONS TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.—Amounts appropriated under paragraph (1)(B) to the Adminis-

trator of the Environmental Protection Agency shall be directly available to the Secretary.

(4) APPROPRIATIONS TO THE SECRETARY OF THE INTERIOR.—Amounts appropriated under paragraph (1)(B) to the Secretary may be—

- (A) derived from the land and water conservation fund;
  - (B) appropriated to the Bureau of Reclamation; or
  - (C) any combination of subparagraphs (A) and (B);
- as specified in appropriations Acts.

**SEC. 102. CONCURRENT WILDLIFE RESOURCES STUDIES.**

(a) IN GENERAL.—The Secretary shall provide for the conduct, concurrently with the feasibility study under section 101(c), of studies of hydrology, wildlife pathology, and toxicology relating to wildlife resources of the Salton Sea by Federal and non-Federal entities.

(b) SELECTION OF TOPICS AND MANAGEMENT OF STUDIES.—

(1) IN GENERAL.—The Secretary shall establish a committee to be known as the "Salton Sea Research Management Committee". The Committee shall select the topics of studies under this section and manage those studies.

(2) MEMBERSHIP.—The committee shall consist of the following 5 members:

- (A) The Secretary.
- (B) The Governor of California.
- (C) The Executive Director of the Salton Sea Authority.
- (D) The Chairman of the Torres Martinez Desert Cahuilla Tribal Government.
- (E) The Director of the California Water Resources Center.

(c) COORDINATION.—The Secretary shall require that studies under this section are coordinated through the Science Subcommittee which reports to the Salton Sea Research Management Committee. In addition to the membership provided for by the Science Subcommittee's charter, representatives shall be invited from the University of California, Riverside; the University of Redlands; San Diego State University; the Imperial Valley College; and Los Alamos National Laboratory.

(d) PEER REVIEW.—The Secretary shall require that studies under this section are subjected to peer review.

(e) AUTHORIZATION OF APPROPRIATIONS.—For wildlife resources studies under this section there are authorized to be appropriated to the Secretary from the land and water conservation fund \$5,000,000.

**SEC. 103. SALTON SEA NATIONAL WILDLIFE REFUGE RENAMED AS SONNY BONO SALTON SEA NATIONAL WILDLIFE REFUGE.**

(a) REFUGE RENAMED.—The Salton Sea National Wildlife Refuge, located in Imperial County, California, is hereby renamed and shall be known as the "Sonny Bono Salton Sea National Wildlife Refuge".

(b) REFERENCES.—Any reference in any statute, rule, regulation, executive order, publication, map, or paper or other document of the United States to the Salton Sea National Wildlife Refuge is deemed to refer to the Sonny Bono Salton Sea National Wildlife Refuge.

**SEC. 104. RELATIONSHIP TO OTHER LAWS AND AGREEMENTS GOVERNING THE COLORADO RIVER.**

(a) PRESERVATION OF RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLORADO RIVER.—Nothing in this Act shall be construed to alter, amend, repeal, modify, interpret, or to be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with Mexico (Treaty Series 944, 59 Stat. 1219 and Minute 242 thereunder), the Colorado River Basin Salinity Control Act of 1974 (94 Stat. 1063), the Flood Control Act of 1944 (58 Stat. 887), the decree entered by the United States Supreme Court in *Arizona v. California*, et al. (376 U.S. 340) (1964) and decrees supplemental thereto, the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (45 Stat. 774), the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project Act (82 Stat. 885), including the Criteria for Coordinated Long Range Operation of Colorado River Reservoirs and the Annual Operating Plans developed thereunder, the San Luis Rey Indian Water Rights Settlement Act (102 Stat. 4000), any contract entered into pursuant to section 5 of the Boulder Canyon Project Act, or any other entitlement to the use of the Colorado River existing pursuant to or recognized by Federal law. Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of Federal law to the laws of the States or political subdivisions of a State with regard to the diversion and use of Colorado River water, or to relieve any person of any obligation imposed

by any law of any State, tribe, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State, tribal, or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State or tribe, so that the two cannot be reconciled or consistently stand together.

(b) **LIMITATION ON COLORADO RIVER WATER.**—Nothing in this Act shall be construed to enlarge an existing entitlement or to create a new entitlement to Colorado River water for California or any user therein.

(c) **FLOOD FLOWS.**—In no event shall Colorado River water be diverted for Salton Sea restoration except as provided in this subsection. Diversion into the All-American Canal for delivery directly to the Salton Sea of flood flows in the Colorado River that are required by the Water Control Manual for Flood Control, Hoover Dam and Lake Mead, Colorado River, Nevada-Arizona, adopted February 8, 1984, and which would pass to Mexico in excess of the amount required to be delivered pursuant to the Mexican Water Treaty and Minute 242 thereunder may be made available to carry out the purposes of this Act. The volume of water diverted pursuant to this subsection shall be limited to the excess capacity of the All-American Canal to carry such flood flows after, and as, it has been used to meet existing obligations. The diversion of water from time to time under this subsection shall not give rise to any ongoing right to the recurrent use of such waters or the All American Canal or facilities.

## **TITLE II--EMERGENCY ACTION TO IMPROVE WATER QUALITY IN THE ALAMO RIVER AND NEW RIVER**

### **SEC. 201. ALAMO RIVER AND NEW RIVER IRRIGATION DRAIN WATER.**

#### **(a) RIVER ENHANCEMENT.**—

(1) **IN GENERAL.**—The Secretary shall promptly conduct research and implement actions, which may include river reclamation and wetlands development, to create systems to improve water quality in the Alamo River and New River, Imperial County, California, by treating water in those rivers and irrigation drainage water that flows into those rivers

(2) **ACQUISITIONS.**—The Secretary may acquire equipment, real property, and interests in real property (including site access) as needed to implement actions under this section if the State of California, a political subdivision of the State, or Desert Wildlife Unlimited has entered into an agreement with the Secretary under which the State, subdivision, or Desert Wildlife Unlimited, respectively, will, effective 1 year after the date that systems for which the acquisitions are made are operational and functional—

(A) accept all right, title, and interest in and to the equipment, property, or interests; and

(B) assume responsibility for operation and maintenance of the equipment, property, or interests.

(3) **TRANSFER OF TITLE.**—Not later than 1 year after the date a system developed under this section is operational and functional, the Secretary shall transfer all right, title, and interest of the United States in and to all equipment, property, and interests acquired for the system in accordance with the applicable agreement under paragraph (2).

(4) **MONITORING AND OTHER ACTIONS.**—The Secretary shall establish a long-term monitoring program to maximize the effectiveness of any wetlands developed under this title and may implement other actions to improve the efficacy of actions implemented pursuant to this section.

(b) **COOPERATION.**—The Secretary shall implement subsection (a) in cooperation with the Desert Wildlife Unlimited, the Imperial Irrigation District, California, and other interested persons.

#### **(c) PERMIT EXEMPTION.**—

(1) **CONGRESSIONAL INTENT.**—Due to recent and ongoing wildlife die-offs and the impending collapse of the Salton Sea ecosystem, it is the intent of Congress to provide an expedited process to begin to arrest the ecological disaster that is overcoming the Salton Sea.

(2) **EXEMPTION.**—No permit shall be required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) for actions taken under subsection (a)(1).

(3) LIMITATION.—This subsection shall not be construed to affect the application of section 402 of the Federal Water Pollution Control Act to any action other than an action taken under subsection (a)(1).

(d) AUTHORIZATION OF APPROPRIATIONS.—For river reclamation and other irrigation drainage water treatment actions under this section, there are authorized to be appropriated to the Secretary from the land and water conservation fund \$3,000,000.

#### PURPOSE OF THE BILL

The purpose of H.R. 3267 is to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a feasibility study and construct a project to reclaim the Salton Sea.

#### BACKGROUND AND NEED FOR LEGISLATION

The modern-day Salton Sea was formed in late 1905 as the result of a break in a temporary levee along the Colorado River. For a period of about 16 months after the breach, the Colorado River flowed into the depression, filling it to a depth of more than 80 feet (about 30 feet deeper than it is today). For a time following closure of the levee break, water levels declined rapidly as evaporation greatly exceeded inflow. A minimum level was reached in the 1920s. Thereafter the level of the Sea once again began to rise, due in major part to the importation of water into the Salton Basin for urban and rural uses. The level of the Sea has been steadily rising since development of the area.

Located at the bottom of the Salton Basin, the current Salton Sea has a surface elevation (1996) of about -227 feet mean sea level with an estimated surface area of 240,000 acres (376 square miles). The Sea is about 35 miles long and 15 miles wide. At its current elevation, the Sea has a maximum depth of 51 feet. The Salton Sea has a volume of approximately 7.5 million acre-feet (AF) of water and annual inflows of approximately 1.3 million AF that contribute about 4 million tons of additional salt.

The Salton Basin is a below-sea level, geographic depression. It extends from Palm Springs, California, on the north to the Gulf of California on the south. The Basin has undergone prehistoric/historic cycles of filling with water and evaporating as the Colorado River made radical course changes. Consequently, the natural condition of this below sea-level basin was either a "Salton Sea" that was a much larger fresh water lake or a dry lake bed. In its current condition, the sea is located approximately 250 feet below its natural outlet. Historically, the Salton Sea was either filled and fed by the Colorado River, with an outflow into the Gulf of California or, when it was periodically cut off from the Colorado River water supply, it dried up over a 50-100 year period. It then remained a dry lake bed until the next change in the course of the Colorado River, which again refilled the Basin. Maintenance of the current condition is neither of the natural states for the area. Any alternative will have to be maintained indefinitely since the existing level is artificially low or high compared to the two natural conditions.

The basin where the Salton Sea is located includes more than 7,500 square miles of land and water. At the current water level, evaporation is the only escape for water that enters the Basin. High temperatures and low humidity contribute to rapid evapo-

ration of the water, resulting in approximately 5.5 feet of evaporation from the Sea per year. Today, water inflow and evaporation are roughly equivalent. The Sea's salinity has changed since its creation in 1905. At the time of the levee break, the salinity of the Sea was about that of the Colorado River, but because of evaporative concentration and resuspension of earlier lakebed salt deposits, the salinity began to rise as water levels fell in the 1920s. Today the Sea's salinity has reached its highest historical level of approximately 44 parts per thousand (ppt), or a level about 25 percent greater than that of ocean water.

Land ownership around the Sea is typically in a checkerboard pattern, with sections alternating between federal and private ownership. Much of the north shore is owned by the Torres-Martinez Desert Cahuilla Indians. The northeast shoreline has been leased to California for use as the Salton Sea State Recreation Area. In 1924 and 1928, the President of the United States executed Public Water Reserve Order Numbers 90 and 114, respectively, for withdrawal of lands located in and surrounding the Salton Sea. The Public Water Reserve consists of 123,360 acres of public land lying below an elevation of -220 feet. These lands were designated as a repository to receive and store agricultural, surface, and sub-surface drainage waters. The State of California designated the Sea for this same purpose in 1968.

Land, recreational, and ecological values associated with the Sea have declined over the last decade, due in large part to the rising salinity and surface elevation. Without efforts to reduce and stabilize the salinity level, it will continue to rise and will have severe impacts on the existing fish and wildlife resources, as well as causing odor and land value impacts. Ideally, for the saltwater species of fish and other aquatic life in the Sea, a salinity level equivalent to ocean water should prevail at around 35 ppt. However, biologists regard a salinity level of between 33 ppt and 37 ppt as adequate. With increasing salinity, however, survival of the fish and other wildlife resources in the Sea is in jeopardy. Limited reproductive success of some species has placed physiological stresses on a host of organisms in the fishery food chain. It is not known at what salinity level the food chain may break, but aquatic biologists believe that reproduction of some species of fish fails when the salinity permanently exceeds 40 ppt.

High salinity and odor from fish die-offs tend to discourage recreational use of the Sea for body contact sports, such as swimming and water skiing. In general, highly saline water can be irritating to the eyes and skin. Higher salinity also causes increased corrosion of boats and other recreational equipment. With increasing salinity, there has been a gradual decline in water-related recreational use of the Sea. The extensive use of the Sea for recreation in the 1950s and 1960s has declined dramatically.

Local authority to pursue remedies to problems facing the Salton Sea comes from the formation of the Salton Sea Authority by a Joint Powers Agreement on June 2, 1993. This agreement between the Coachella Valley Water District, Imperial Irrigation District, Imperial County, and Riverside County established the Authority as a recognized state agency. The Authority was formed to work with California state agencies, federal agencies, and the Republic



of Mexico to develop programs that would continue beneficial use of the Salton Sea. In the agreement, "beneficial use" includes: the primary purpose of the Sea as a depository for agricultural drainage, storm water, and wastewater flows; protection of endangered species, fisheries, and water fowl; and recreational purposes.

Several Members of Congress have also formed the Salton Sea Task Force. The Task Force is chaired by Mary Bono and co-chaired by Duncan Hunter, Jerry Lewis, George Brown, and Ken Calvert.

The Salton Sea Authority, the California Department of Water Resources and the Bureau of Reclamation recently published a final draft report that evaluates potential alternative solutions to the problems afflicting the Sea. The "Salton Sea Area Study Alternative Evaluation Appraisal Report" evaluated 54 alternatives that were submitted for consideration to improve the physical, chemical, and biological conditions of the Salton Sea. An evaluation/screening process was developed and applied to all 54 alternatives. As a result, five alternatives were identified for further consideration. All five involve diking as a major feature to solve the salinity and elevation problems of the Sea. According to the draft report, the location, size and operational details of the diked impoundment will have both economic and environmental effects on the surrounding area. These effects would need to be evaluated in greater detail to implement an alternative that will bring the greatest overall benefit to the area.

Economic benefits to both the private sector economy and public sector revenues could be realized from reclaiming the Salton Sea. The amount of economic improvement would be dependent upon the project option that was selected and the level of remediation that was obtained. The higher the quality of Sea water achieved, the greater potential for economic benefit. One study estimates the total benefit from an effective cleanup to range from \$270 million to \$360 million per year. However, this study assumed a non-diking option which would be more expensive to implement.

The Committee expects that the Secretary of the Interior will transmit an interim report to the relevant Congressional Committees and that the Committees of jurisdiction will hold hearings on the report.

#### COMMITTEE ACTION

H.R. 3267 was introduced by Congressman Duncan Hunter (R-CA) on February 25, 1998. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. The Subcommittee on Water and Power held a hearing on H.R. 3267 on Thursday, March 12, 1998, where witnesses discussed issues affecting the water quality and water levels of the Salton Sea and legislative proposals were evaluated. Testimony was heard from Senator Barbara Boxer (D-CA); Congressman Hunter; Congressman Jerry Lewis (R-CA); Congressman George Brown (D-CA); Mr. David Hayes, Counselor to the Secretary of the Department of the Interior, who was accompanied by Mr. Robert Johnson, Lower Colorado Regional Director, Bureau of Reclamation, and Michael Spear, Pacific Regional Director, U.S. Fish and Wildlife Service; The Honorable Douglas P. Wheeler, Sec-

retary for Resources, State of California; Mr. Tellis Codekas, President, Salton Sea Authority, who was accompanied by Mr. Tom Kirk, Executive Director, Salton Sea Authority; Mr. Tom Veysey, Supervisor, Imperial County; Mr. Paul Cunningham, Director of External Affairs, Imperial Irrigation District; Mr. Richard Bunker, Chairman, Colorado River Commission of Nevada; Mr. Christopher Harris, Water Resources Program Manager, Arizona Department of Water Resources; Mr. Art Lopez, Chair, Torres Martinez Desert Cahuilla Indians; Mr. R. Wayne Hardie, Group Leader, Energy & Environmental Analysis, Los Alamos National Laboratory; Dr. Henry J. Vaux, Jr., Associate Vice President, Division of Agriculture and Natural Resources, University of California; Mr. Wayne E. Cook, P.E., Executive Director, Upper Colorado River Commission; Mr. Leon Lesika, Executive Director, Desert Wildlife Unlimited; Mr. Stephen Weber, President of San Diego State University, Salton Sea University Research Consortia; and Mr. Evan M. Hirsche, Director, National Wildlife Refuge Campaign, National Audubon Society.

On March 26, 1998, the Water and Power Subcommittee met to consider H.R. 3267. Subcommittee Chairman John T. Doolittle (R-CA) offered an en bloc amendment that addressed issues raised at the March 12, 1998, legislative hearing. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the Full Committee by voice vote. On May 20, 1998, the Full Resources Committee met to consider H.R. 3267. Mr. Doolittle offered an amendment in the nature of a substitute to address issues raised since the March 26, 1998, markup held by the Subcommittee. The Doolittle amendment requires Congressional Committee review and approval of the reclamation plan prior to implementation of the plan, limits the federal cost share of construction of the Project to 50 percent of the total cost of that construction, and increases the amount authorized for appropriations for the Project to \$350,000,000. Congressmen John B. Shadegg (R-AZ) and John Ensign (R-NV) offered an amendment to the Doolittle amendment to preserve the rights and obligations with respect to Colorado River water. This language will ensure that, if water for Salton Sea reclamation comes from the Colorado River, it will be in the context of existing rights. The amendment was adopted by voice vote. Congressman George Miller (D-CA) offered a substitute to the Doolittle amendment which authorized only a study for a solution to the Salton Sea. The amendment failed on voice vote. Congressman Sam Farr (D-CA) offered an amendment to the Doolittle amendment to delete the authorization of appropriations from the Land and Water Conservation Fund. The amendment failed by voice vote. The Doolittle amendment, as amended, was then adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; table of contents*

This Act may be cited as the "Sonny Bono Memorial Salton Sea Reclamation Act."

### *Section 2. Findings*

The Congress finds that the Salton Sea, located in Imperial and Riverside Counties, California, is an economic and environmental resource of national importance. The Salton Sea is critical as a reservoir for irrigation, municipal, and stormwater drainage; and a component of the Pacific flyway. Reclaiming the Salton Sea will provide national and international benefits and as such the federal, state, and local governments have a shared responsibility to assist in the reclamation of the Salton Sea.

### *Section 3. Definitions*

In this Act, the term "Project" means the Salton Sea reclamation project authorized by section 101. The term "Salton Sea Authority" means the Joint Powers Authority by that name established under the laws of the State of California by a Joint Power Agreement signed in June of 1993. The term "Secretary" means the Secretary of the Interior, acting through the Bureau of Reclamation.

## TITLE I—SALTON SEA RECLAMATION PROJECT

### *Section 101. Salton Sea Reclamation Project Authorization*

This section directs the Secretary of the Interior, acting through the Bureau of Reclamation, to undertake a project to reclaim the Salton Sea. This section provides that the project shall: (1) reduce and stabilize the overall salinity of the Salton Sea; (2) stabilize the surface elevation of the Salton Sea; (3) reclaim, in the long term, healthy fish and wildlife resources and their habitats; (4) enhance the potential for recreational uses and economic development of the Salton Sea; and (5) ensure the continued use of the Salton Sea as a reservoir for irrigation drainage.

The Secretary is instructed to promptly initiate a study, to be carried out in accordance with a Memorandum of Understanding among the Secretary, the Salton Sea Authority, and the Governor of California, to develop a reclamation plan that meets the requirements mentioned above. The Memorandum of Understanding shall establish criteria for evaluation and selection of options, including criteria for determining the magnitude and practicability of costs of construction, operation, and maintenance of each option evaluated.

It is important that any option selected to reclaim the Salton Sea be agreed to by the local, state, and federal governments as each level of government has a shared responsibility to assist in the reclamation of the Salton Sea.

In making Project design calculations, the Secretary shall apply assumptions regarding water inflows into the Salton Sea Basin that: (1) encourage water conservation; (2) account for transfers of water out of the Salton Sea Basin; (3) are based on the maximum likely reduction in inflows into the Salton Sea Basin; and (4) include the assumption that inflows into the Salton Sea Basin could be reduced to 800,000 AF or less per year.

Natural inflows into the Salton Sea are insufficient to maintain its continued existence at any elevation. The Sea is currently sustained at fluctuating elevations by inflows from precipitation, irrigation drainage water, and municipal waste water from the Imperial, Coachella and Mexicali Valleys. These waters originate either

as groundwater pumped from basins within the Salton Sea watershed or from Colorado River water imported into the watershed for beneficial use. Rights to make beneficial use of Colorado River water are governed by a unique collection of statutes, international agreements, interstate compacts, court decrees and contracts known collectively as the Law of the River. Rights to make beneficial use of groundwaters within the Salton Sea watershed within the State of California are governed by California law.

The Salton Sea itself has no right or priority to receive water from any source. Drainage and seepage waters that sustain the Sea are simply the incidental result of beneficial uses of water which are governed by existing laws, including the Law of the River. The State of California is striving to ensure that the state lives within its 4.4 million AF allocation of Colorado River water. Transfers from agricultural to urban water districts are contemplated to be a crucial component of this effort for the State of California to live within its allocation of Colorado River water.

Efforts are currently underway which would transfer between 130,000 and 300,000 AF of water from the Imperial Irrigation District to the San Diego County Water Authority. Additionally, efforts to treat municipal and industrial wastewater in Mexicali could result in some water being redirected south of the international border. This would reduce the amount of water flowing north into the New River, which would further reduce flow into the Salton Sea. Therefore design calculations must be based on the assumption that flows into the Salton Sea could eventually be reduced to 800,000 AF/year. The projected rate of reduction of inflows must be unanimously consented to by the Secretary, the Governor, and the Salton Sea Authority for Project design to proceed. These provisions are included to clearly indicate the Committee's support and approbation for anticipated future water transfers out of the Salton Sea Basin, and to avoid the adoption of an alternative that frustrates such water management choices.

The costs of construction, and operation and maintenance must be considered in evaluating options to reclaim the Salton Sea. The federal share of the cost of construction of the Project is not to exceed 50 percent. The federal share of the cost of operating and maintaining the Project is to be determined during the feasibility study process. However, since most of the ongoing economic benefit from remediating the Sea will accrue to state and local interests the Committee expects that operation and maintenance costs will generally be considered a state and local responsibility.

Not later than 18 months after commencement of the feasibility study the Secretary is to submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on the findings and recommendations of the feasibility study, including the reclamation plan for the Salton Sea, a cost sharing formula for operation and maintenance, professional engineer's cost estimates, and complete professional engineering and design specifications and drawings sufficient to use for soliciting bids of the construction activities to be carried out. Also within this 18-month period the Secretary shall complete all environmental compliance and permitting activities required for those construction activities.

Upon approval of a reclamation plan by the Committees, which enables the authorization of appropriations, and subject to those appropriations, the Secretary shall initiate construction of the Project. No federal funds may be expended for any construction activity under the Project until sufficient non-federal funds are obligated to pay the non-federal share of the activity. Actual Project construction activities (design, construction, contracting, construction management, inspection) including contracting for those activities, may be delegated by the Secretary, totally or in part, to the State of California, a political subdivision thereof, a local government, or a private entity to facilitate Project construction. In-kind contributions may be credited to the non-federal cost share for Project construction.

This Act is not to be considered to supersede or otherwise affect any treaty, law, or agreement governing use of water from the Colorado River. All activities to implement the Project under this Act must be carried out in a manner consistent with rights and obligations of persons under those treaties, laws, and agreements.

Any complaint or challenge of any decision, action, or authorization taken pursuant to this Act shall be filed in a United States district court within 30 days following the date of the decision, action, or the authorization. Such court shall have jurisdiction to resolve any complaint or challenge in accordance with chapter 7 of title 5, United States Code, except that the court shall expedite its review as necessary to ensure that remedial actions at the Salton Sea are not unduly or inappropriately delayed. In connection with expediting judicial review, the court shall not delay ruling upon a request for a temporary restraining order or preliminary injunction for more than 30 days after the date of the filing of such request. If a temporary restraining order or preliminary injunction is entered into by a court, the court shall proceed to a final judgment in the matter within 90 days. The Committee has agreed on this judicial review language to address the concerns of quickly deteriorating environmental conditions at the Salton Sea. It is the Committee's intent that judicial review actions should keep in mind the intent of Congress to allow cleanup to proceed unhampered by dilatory litigation. The judicial review language expresses that intent by specifying time provisions for judicial review.

In regard to any actions, programs, or projects implemented by the Secretary under the authority of this Act, the Imperial Irrigation District and Coachella Valley Water District are not to be liable for any damages arising from enlargement of the Salton Sea and the encroachment of water onto adjacent lands, reduction of the elevation of the Salton Sea, including exposure of lakebed sediments to the environment, or any other occurrence which might result in a claim of damage by any owner of property adjacent to the Salton Sea or any other person. No person, including the Imperial Irrigation District, California, the Coachella Valley Water District, California, the Salton Sea Authority, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, but not including the Government of the United States, shall be liable for damages arising from any effects to the Salton Sea or its bordering area resulting from cooperation with the Secretary in regard to any actions, programs, or projects implemented

pursuant to this Act, any action to comply with an order of the Secretary under this Act, a state or federal court, or a state or federal administrative or regulatory agency interpreting this Act, or any other action that reduces the volume of water that flows directly or indirectly into the Salton Sea.

The elevation of the Sea is affected by many factors, including inflows from Mexico and unusual precipitation events. In implementing H.R. 3267, the federal government may affect the elevation of the Sea through actions authorized in the legislation, such as the importation of surplus flood flows from the Colorado River. This language is included to provide liability protection for those involved with ongoing and proposed water conservation and water transfer activities, activities that this Committee supports.

This section clarifies that the Imperial Irrigation District, the Coachella Valley Water District, and others will not face any liability as a result of the actions of the federal government carried out pursuant to this legislation or as a result of the future water conservation or water transfer activities actions.

This section provides that the Water Districts will be immune from any liability resulting from the actions of the Secretary in implementing this Act. The Districts are currently involved in litigation with private property owners and the Torres-Martinez Desert Cahuilla Indian Tribe over flooding of lands that form a portion of the seabed. If the Secretary places additional waters into the Sea, the Districts would not be held liable for the resulting damage. The Districts would also not be held liable for any diminution in the level of the Salton Sea that results from the Secretary's implementation of the Salton Sea restoration project. Finally, the Districts would not be liable for claims of damage by adjacent property owners.

Any of the California water agencies likely to be involved in actions relating to the Salton Sea will not face liability resulting from cooperating with the Secretary on Salton Sea projects or programs, complying with judicial or administrative orders interpreting this Act, or any other action that reduces the volume of water which flows directly or indirectly into the Sea. This section further clarifies that the water agencies cited are not released from liability relating to obligations imposed by other laws. Moreover, these water agencies must comply with the California Environmental Equality Act and the National Environmental Policy Act.

There are authorized to be appropriated to carry out the feasibility study, including preparation and any revision of the reclamation plan, including professional engineering and design specifications and drawings, and completion of environmental compliance and permitting required for construction of the Project, \$22,500,000. There are authorized to be appropriated for construction of the Project in accordance with a reclamation plan approved by the Committees, \$350,000,000. It is the Committee's responsibility and Constitutional duty to provide stewardship and oversight of authorizations of appropriations from the Committee; therefore, authorizations of appropriations are conditioned on the approval of the plan by the Committee. Amounts authorized for construction of the Project may be appropriated to the Administrator of the Environmental Protection Agency and the Secretary of the Interior.

Amounts appropriated to the Administrator of the Environmental Protection Agency for construction of the Project shall be directly available to the Secretary. Amounts appropriated for construction of the Project to the Secretary may be derived from the Land and Water Conservation Fund; appropriated to the Bureau of Reclamation; or any combination of these as specified in appropriations Acts. The Environmental Protection Agency is identified as a funding source in the bill. The goal of reclaiming the Salton Sea is clearly integral with the mission of the U.S. Environmental Protection Agency which is to "protect human health and to safeguard the natural environment—air, water, and land—upon which life depends," as stated in the Agency's Strategic Plan. This bill provides an authorization of appropriations to the Secretary of Interior from the Land and Water Conservation Fund. The purpose of the Land and Water Conservation Fund, which was created in 1964, is to meet future outdoor recreation demands and needs of the American people. The Salton Sea Congressional Task Force Members have proclaimed that restoring the Salton Sea will restore a recreational opportunity of national significance. The Task Force Members have indicated that 6 percent of the American population lives within a day's drive of the Sea. The Committee believes it was the intent Congress, when establishing the Land and Conservation Fund, to provide the means of meeting future outdoor recreation demands and needs of the American people. The restoration of the Salton Sea provides such an opportunity.

*Section 102. Concurrent wildlife resources studies*

The Secretary is to conduct, concurrently with the feasibility study, of wildlife resource studies including studies of hydrology, wildlife pathology, and toxicology relating to wildlife resources of the Salton Sea by federal and non-federal entities. It is the intent of the Committee to provide the authority to the Secretary to conduct, or to have conducted, real time scientific studies to provide scientific data that would be used in the feasibility study's decision making processes. This section requires the Secretary to establish a committee to be known as the "Salton Sea Research Management Committee." The committee shall select the topics of studies under this section and manage those studies. The committee shall consist of the following five members: the Secretary, the Governor of California, the Executive Director of the Salton Sea Authority, the Chairman of the Torres Martinez Desert Cahuilla Tribal Government, and the Director of the California Water Resources Center. The Secretary shall require that studies under this section are coordinated through a Science Subcommittee which reports to the Salton Sea Research Management Committee. In addition to the membership provided for by the Science Subcommittee's charter, representatives shall be invited from the University of California, Riverside; the University of Redlands; San Diego State University; the Imperial Valley College; and Los Alamos National Laboratory. The Secretary shall require that studies under this section are subjected to peer review. For the wildlife resources studies under this section there are authorized to be appropriated to the Secretary from the Land and Water Conservation Fund \$5,000,000. The Committee intends that the best scientific knowledge available should

be applied to the development of the feasibility study. Therefore, the Committee has specifically provided an opportunity for the eminently qualified institutions identified to assist in the development and implementation of the scientific research required to complete the feasibility study.

*Section 103. Salton Sea National Wildlife Refuge renamed as Sonny Bono Salton Sea National Wildlife Refuge*

Restoration of the Salton Sea was a focus and primary concern of the late Congressman Sonny Bono. H.R. 3267 is designed to promote Congressman Bono's dream of restoring the Sea quickly and effectively. As Sonny Bono was a Congressional leader directing national attention to undertake this project, it is appropriate that the Salton Sea National Wildlife Refuge, located in Imperial County, California, be renamed as the "Sonny Bono Salton Sea National Wildlife Refuge."

*Section 104. Relationship to other laws and agreements governing the Colorado River*

Flows of the Colorado River are impounded at Hoover Dam and stored in Lake Mead. Throughout the year, water is released from storage for delivery to entitlement holders in the United States or to satisfy obligations under international agreements with the Republic of Mexico. Entitlement holders in the United States are those persons or entities with contracts with the Secretary of the Interior under Section 5 of the Boulder Canyon Project Act or federal establishments with reserved water rights decreed to them by the U.S. Supreme Court decree in *Arizona v. California* (376 U.S. 340) (1964) and decrees supplemental thereto. Under the decree and the Boulder Canyon Project Act, no person other than an entitlement holder may divert and use Colorado River water. Section 1 of the Boulder Canyon Project Act also requires that Hoover Dam be used for the purpose of controlling floods. To carry out this purpose, the United States Army Corps of Engineers has established operating criteria mandating releases of water under specified conditions to create space to capture high volume flows into Lake Mead. These flood releases may be in excess of delivery requirements of entitlement holders in the United States and the Republic of Mexico. When that situation occurs, the water will flow unused by the United States into Mexico.

This section stipulates that nothing in this Act is to be construed to enlarge an existing entitlement or to create a new entitlement to Colorado River water for California or any user therein. This section also stipulates that only Colorado River water flood flows will be available for restoration work at the Salton Sea under this bill. Diversion into the All-American Canal for delivery directly to the Salton Sea of flood flows in the Colorado River that are required by the Water Control Manual for Flood Control, Hoover Dam and Lake Mead, Colorado River, Nevada-Arizona, adopted February 8, 1984, and which would pass to Mexico in excess of the amount required to be delivered pursuant to the Mexican Water Treaty and Minute 242 thereunder may be made available to carry out the purposes of this Act.



The volume of water diverted pursuant to this subsection shall be limited to the excess capacity of the All-American Canal to carry such flood flows after, and as, it has been used to meet existing obligations. The diversion of water from time to time under this subsection shall not give rise to any ongoing right to the recurrent use of such waters or the All-American Canal or facilities.

This section requires that nothing in this Act shall be construed to alter, amend, repeal, modify, interpret, or to be in conflict with the provisions of any entitlement to the use of the Colorado River existing pursuant to or recognized by federal law. Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of federal law to the laws of the states or political subdivisions of a state with regard to the diversion and use of Colorado River water, or to relieve any person of any obligation imposed by any law of any state, tribe, or political subdivision of a state. No provision of this Act shall be construed to invalidate any provision of state, tribal, or local law unless there is a direct conflict between such provision and the law of the state, or political subdivision of the state or tribe, so that the two cannot be reconciled or consistently stand together. The Committee included this language to provide direction to any reviewing court that it should make every possible attempt to reconcile in accordance with the state, tribal, or local law that may be offended.

## TITLE II—EMERGENCY ACTION TO IMPROVE WATER QUALITY IN THE ALAMO RIVER AND NEW RIVER

### *Section 201. Alamo River and New River irrigation drain water*

This section provides that the Secretary is to promptly conduct research and implement actions, which may include river reclamation and wetlands development, to create systems to improve water quality in the Alamo River and New River, Imperial County, California, by treating water in those rivers and irrigation drainage water that flows into those rivers. The Committee contends that basin-wide improvements in environmental quality are required to maintain a healthy and vibrant Salton Sea ecosystem. Especially important is improving the chemical and biological quality of the water that is entering the Salton Sea through the New and Alamo River drainages; 80 percent of the water entering the Salton Sea comes from these two rivers.

This section provides authority for the Secretary to acquire equipment, real property, and interests in real property (including site access) as needed to implement actions under this section if the State of California, a political subdivision of the State, or Desert Wildlife Unlimited has entered into an agreement with the Secretary under which the State, subdivision, or Desert Wildlife Unlimited, will, effective one year after the date that systems for which the acquisitions are made are operational and functional, accept all right, title, and interest in and to the equipment, property, or interests; and assume responsibility for operation and maintenance of the equipment, property, or interests. Not later than one year after the date a system developed under this section is operational and functional, the Secretary shall transfer all right, title,

and interest of the United States in and to all equipment, property, and interests acquired for the system in accordance with the agreement, as mentioned above. The Committee maintains that no new real property shall be added to the federal government under this section. If the federal government is required to acquire real property under this section, then the Secretary must first have entered into an agreement with one of the non-federal entities identified, agreeing that the non-federal entity will, effective one year after the date that systems for which the acquisitions are made are operational and functional, accept all right, title, and interest in and to the equipment, property, or interests, and assume responsibility for operation and maintenance of the equipment, property, or interests. Explicit authority and direction is given to the Secretary to transfer all right, title, and interest in and to the equipment, property, or interests, of the United States in and to all equipment, property, and interests acquired for the systems developed under this section. The Secretary shall implement this section in cooperation with the Desert Wildlife Unlimited, the Imperial Irrigation District, California, and other interested parties.

No permit shall be required under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) for actions taken under this section. This section provides a National Pollutant Discharge Elimination System (NPDES) permit exemption allowing the Secretary to construct wetlands on the New and Alamo Rivers to improve river water quality in those two rivers, and consequently the Salton Sea. The Committee agrees that constructing wetlands to improve river water quality is a good idea. The Environmental Protection Agency (EPA) General Counsel has advised that a NPDES permit would not be needed for this project as described, and was not required for almost identical projects, for example the Des Plaines Wetlands River Project in Illinois. Under subsections 402(b) and (c) of the Federal Water Pollution Control Act, the State of California has been approved by the Administrator of EPA to administer the discharge permit program for discharges into navigable waters within its jurisdiction. The California Regional Water Quality Control Board, Colorado River Basin Region, is the state agency that would have discharge permitting authority for this proposed project. The Control Board believes that constructing wetlands to improve river water quality on the New and Alamo Rivers is a good idea and support the idea of the exemption as written. The State of California desires permit exemption language that would provide some level of assurance that the State would not be financially liable for a project that improved environmental quality but may not be to some future plaintiff's specifications.

For river reclamation and other irrigation drainage water treatment actions under this section, there are authorized to be appropriated to the Secretary from the Land and Water Conservation Fund \$3,000,000.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee

on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 3267.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3267. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3267 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 3267.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3267 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 8, 1998.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3267, the Sonny Bono Memorial Salton Sea Reclamation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gary Brown.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 3267—Sonny Bono Memorial Salton Sea Reclamation Act*

Summary: H.R. 3267 would direct the Secretary of the Interior to study wildlife in and around the Salton Sea and undertake a project for reclaiming the sea. It would authorize the appropriation of \$377.5 million to carry out those requirements and such sums as necessary for the federal share of operating and maintaining the project after it is completed.

The bill also would rename the Salton Sea National Wildlife Refuge as the Sonny Bono Salton Sea National Wildlife Refuge. Finally, the bill would direct the secretary to research and implement actions for treating irrigation drainage water that flows into the Alamo River and the New River in Imperial County, California, and would authorize the appropriation of \$3 million for that purpose.

CBO estimates that implementing H.R. 3267 would result in additional outlays of \$94 million over the 1999–2003 period, assuming the appropriation of the amounts authorized by the bill. The remaining amounts authorized by the bill would be spent after 2003. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The Salton Sea is an inland body of water in California that was created in 1905 by a breach in a levee along the Colorado River. Increasing salinity in the Salton Sea is harmful to wildlife and is reducing the sea's usefulness for recreation and other purposes. The Alamo and New Rivers flow into and contribute to the salinity and contamination of the Salton Sea.

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 3267 would result in new spending subject to appropriation of \$11 million in 1999, \$12 million in 2000, \$5 million in 2001, \$25 million in 2002, and \$41 million in 2003. New spending would total \$290 million over the 2004–2010 period and about \$6 million annually thereafter. In 1998, about \$8 million was appropriated to the Bureau of Reclamation, the Environmental Protection Agency, and the Fish and Wildlife Service for studying the Salton Sea and for operating the Salton Sea National Wildlife Refuge. The estimated budgetary impact of H.R. 3267 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal years, in millions of dollars—					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority <sup>1</sup> .....	8	0	0	0	0	0
Estimated Outlays .....	3	4	1	0	0	0
Proposed Changes:						
Estimated Authorization Level .....	0	17	14	0	35	53
Estimated Outlays .....	0	11	12	5	25	41
Spending Under H.R. 3267:						
Estimated Authorization Level <sup>2</sup> .....	8	17	14	0	35	53
Estimated Outlays .....	3	15	13	5	25	41

<sup>1</sup>The 1998 level is the amount appropriated in that year for studying the Salton Sea and operating the Salton Sea National Wildlife Refuge.

Basis of estimate: For purposes of this estimate, CBO assumes that the bill will be enacted by the beginning of fiscal year 1999 and that the estimated amounts necessary to implement the bill will be appropriated each year. Outlays are estimated based on historical rates of spending for the types of activities authorized by the bill.

*Salton Sea.* The bill would authorize \$22.5 million for undertaking feasibility studies and environmental activities, \$5 million for studying wildlife, and \$350 million for constructing a project to reclaim the sea.

Based on information provided by the Bureau of Reclamation, CBO expects that studies of project feasibility and wildlife would be completed by the end of fiscal year 2000, that a reclamation plan would be approved and a cost-sharing agreement would be completed in 2001, that construction would begin in 2002, and that the project would be completed by 2010. (The Bureau of Reclamation has indicated that it would take at least five years and up to ten years to complete the project.) Amounts of annual budget authority needed to meet this schedule were estimated by CBO based on information provided by the Bureau of Reclamation.

The bill would require the secretary to undertake the feasibility study in accordance with and immediately after completing a memorandum of understanding with the Salton Sea Authority and the governor of California. The agreement would establish criteria for evaluating and selecting options for reclaiming the Salton Sea. Within 18 months after beginning the study, the secretary would be required to report findings and recommendations to the Congress and to complete all compliance and permitting activities. The secretary would begin constructing the project after Congressional approval of the reclamation plan and completion of a cost-sharing agreement with the Salton Sea Authority and the governor of California.

The annual cost of operating and maintaining the project would be shared by the secretary and nonfederal entities. Based on information provided by the Bureau of Reclamation and nonfederal sponsors, CBO estimates that the federal share would equal 50 percent and that, when the project is complete, total operating and maintenance costs (federal and nonfederal) would range between \$2 million and \$20 million a year. Actual operating and maintenance expenses will depend on the project selected, but CBO estimates that the federal share of the total cost of operating and maintaining the completed project would likely be about \$6 million a year beginning in 2010.

CBO estimates that renaming the Salton Sea National Wildlife Refuge the Sonny Bono Salton Sea National Wildlife Refuge would have no significant budgetary impact.

*Alamo River and New River.* The bill would authorize the appropriation of \$3 million for conducting studies and for treating irrigation and drainage water that flows into the Alamo and New Rivers. Assuming appropriation of the authorized amount, we estimate that \$3 million would be spent over the 1999-2001 period. Nonfederal entities would assume all right, title, an interest as well as responsibility for operating and maintaining any equipment or

property acquired by the secretary for treating water within one year after a system is in place.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: H.R. 3267 contains no intergovernmental mandates as defined in UMRA. State and local governments would be expected to share in the cost of this project, including the costs of construction and operations and maintenance, but their participation would be voluntary. Construction could not begin until the state and local participants reach an agreement with the secretary regarding the sharing of costs. The bill would require that the nonfederal share of construction costs equal at least 50 percent. The cost-sharing formula for operations and maintenance costs would be negotiated among the participants.

The amount expended by state and local participants would depend on the design of the project and the cost-sharing formula for costs of operations and maintenance. If construction costs are consistent with the level of federal appropriations authorized by this bill, the state and local share would be \$350 million—equal to federal spending. Further, assuming that the nonfederal share of operations and maintenance costs would be no more than 50 percent, CBO expects that participating state and local governments would spend no more than \$10 million per year once the project is complete.

Title II would direct the secretary to create systems to improve the quality of water in the Alamo and New Rivers. The secretary could acquire the necessary equipment and property to create such systems only if the state of California, a political subdivision of that state, or a nonprofit group agrees to accept title to and assume responsibility for operating and maintaining that equipment or property.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Gary Brown. Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 3267 contains no unfunded mandates.

#### CHANGES IN EXISTING LAW

If enacted, H.R. 3267 would make no changes in existing law.

## DISSENTING VIEWS

We share the concerns of the supporters of H.R. 3267 about the deteriorating environmental conditions at the Salton Sea in recent years, and we believe the Congress should take appropriate action to address the causes of the fish and bird kills and other problems. We recognize the great interest of our late colleague, Representative Sonny Bono, as well as other members of the California delegation, in seeking a scientifically valid, cost effective response to the Salton Sea crisis. The Congress should pass legislation this year to move decisively towards identifying both the complex causes of the crisis, and towards formulating a joint federal-state response.

But H.R. 3267 fails to meet the tests of scientific soundness of fiscal responsibility. It violates basic congressional procedures by authorizing a very expensive construction project—\$350 million—before we know either the scope of the problem or the appropriate and effective response: we would be, in effect, authorizing a massive water pollution abatement project without having the slightest idea what we are doing.

H.R. 3267 also violates congressional practices concerning committee jurisdiction, undercuts the Land and Water Conservation Fund (which funds the purchase of lands for parks and other public purposes), and opens potentially serious loopholes in one of the nation's premier environmental protection laws, the Clean Water Act.

Far from being an environmentally sound initiative, H.R. 3267 presents a host of scientific, ecological and financial problems that will likely prove both ineffective and likely irresponsible. That is why all of the major environmental organizations in the country, including Defenders of Wildlife and the National Audubon Society, the premier waterfowl groups, do not support this legislation in its current form.

As reported from the Committee on Resources, H.R. 3267 contains numerous controversial issues that will complicate its enactment and seriously jeopardize the likelihood of achieving the goals of improving the biological and recreational values of the Salton Sea.

1. *Premature Authorization of Project Construction.* In a significant departure from normal Congressional procedures, H.R. 3267 simultaneously authorizes both appropriate studies and construction of a \$350 million project for the Salton Sea. The authorization process usually proceeds in two steps, i.e., selection and evaluation of a project first, followed by a separate construction authorization for the selected alternative. While we fully understand the need to expedite approval and funding of a project for the Salton Sea, we are not prepared to agree to "preauthorization" of an unknown project with a Federal cost of at least \$350 million. We note that the problems at the Sea are longstanding, and that scientific work

examining the causes of the massive bird and fish kills and growing salinity have been underway since congressional authorization of such analyses in 1992. Yet leading scientists still profess uncertainty about the precise causes of the problems, making it impossible to design an effective response. The experimental diking plan outlined in the legislation as a favored solution, for example, is designed solely to reduce salinity; however, scientists most familiar with the Salton Sea crisis dismiss salinity as the major factor in the bird and fish deaths, pointing instead to the probability of botulism poisoning from nutrients entering the Sea from the New and Alamo Rivers, which would be unaffected by the diking remediation plan.

Unfortunately, the Committee decided not to accept an amendment in the nature of a substitute to H.R. 3267 that would have authorized a feasibility study and other pre-construction activities. Arguments were offered that urgent action is needed. However, it should be noted that the problems at the Sea have existed for decades, and that scientific reviews, though inadequately funded, have been underway for some time. Yet H.R. 3267 was not even introduced until February 25, 1998. In the interests of moving Salton Sea legislation towards enactment this year in a scientifically and fiscally responsible manner, we would support an amendment to authorize the feasibility study and other pre-construction activities immediately, but not to proceed with an unproven and undefined \$350 million construction project.

2. *Adequate Time for Project Review and Permitting.* This bill imposes severe and scientifically invalid constraints on the amount of time required for project evaluation, selection, study, engineering, and permitting. We agree with the need to expedite a solution for the Salton Sea, but are concerned that critical problems could be ignored in the haste to construct a project. For example, while the Administration has committed to completing the environmental review of the Salton Sea project under NEPA within 18 months, it is not clear that all permitting activities for a complex initiative could also be completed within that time frame as contemplated by the bill.

3. *Congressional Review.* The Committee bill attempts to address the issue of concurrent study/construction authorizations by setting up an elaborate Congressional Review procedure. In brief, the review procedure requires the Secretary of the Interior to submit his report on the Salton Sea reclamation plan to the House Resources Committee and the Senate Energy and Natural Resources Committee. These two committees are then required to review the report, and either approve it, disapprove it, amend it and then approve it, or send it back to the Secretary for more work. The bill sets no scientific, biological, engineering or cost/benefit criteria by which the Committees might judge the acceptability of the plan for the Salton Sea.

We believe this review procedure (sec. 101(d)) is extremely problematic and should be dropped. It ignores at least two other Committees with direct interests in this project (House Transportation and Infrastructure and Senate Environment and Public Works). We are also advised by the Congressional Research Service that it is



unconstitutional because of judicial limits on post-legislative Congressional influence on administrative agency actions.

4. *Judicial Review.* The Committee bill as reported drops the restrictions on judicial review that were included in the bill as introduced, and includes new language designed to expedite the judicial review of "any complaint or challenge of any decision, action, or authorization taken pursuant to this Act." Specific time limits for various actions are set in the Committee bill (30 days for temporary restraining order or preliminary injunction; 90 days for final judgment if a TRO or PI has been issued). This section of the bill is still problematic and should be stricken or amended. The Department of Justice has advised us that they object to the time limits included in this provision.

5. *Limitation on Liability.* The language in this section is very broad and should be tightened up significantly or dropped. Does this bill explicitly create any new liability? If not, why is it necessary to insulate the water agencies? Why should the federal taxpayer alone be liable for actions of others?

While much of the language limits the water users' liability with respect to actions taken in response to this Act, there is also a broad catch-all waiver of liability for "any other action that reduces the volume of water that flows directly or indirectly into the Salton Sea." This provision leaves open the possibility that a significant transfer of water away from the Salton Sea would jeopardize plans for Salton Sea restoration. Although project sponsors have assured us that there is no intention here to interfere with plans for restoring the Sea, the language does suggest that a \$350 million Federal investment in a remediation project could be at risk if critical water supplies are cut off by out-of-basin transfers or other water diversions away from the Salton Sea. Even private landowners would be prevented from bringing lawsuits to protect their rights.

6. *Allocation of Appropriations.* Funds for the Salton Sea Project may be appropriated either to the Administrator of the Environmental Protection Agency, the Secretary of the Interior, or both. Funds appropriated to EPA "shall be directly available to the Secretary [of the Interior]." Funds appropriated directly to Interior are to be either "derived from the Land and Water Conservation Fund" or appropriated to the Bureau of Reclamation. This language is extremely objectionable. We strongly suggest removal of the references to diverting critically needed money from the already underfunded LWCF and EPA to finance this expensive new project.

The Land and Water Conservation Fund was not established to fund water projects or remediation. Indeed, the level of funding contained in this bill is nearly three times as much money as the Republicans have proposed to appropriate to the LWCF for all authorized purposes in FY 1999. The Administration and 19 environmental groups have already advised that they object strenuously to this unconventional and very controversial use of the LWCF and that they will oppose legislation including these provisions. It hardly seems justifiable, in pursuit of an environmental objective, to seriously undercut the Fund that is critical to preserving park land and open space for millions of Americans.

7. *Clean Water Act Permit Exemption.* Title II of the bill authorizes "Emergency Action to Improve Water Quality in the Alamo

River and New River." Virtually all of the inflow to the Salton Sea is from agricultural waste water from the Imperial Irrigation District and other surrounding lands, and from the heavy municipal, industrial and irrigation waste contained in the New River which flows northward from Mexico into the Salton Sea. Indeed, one of the most challenging aspects of Salton Sea remediation will be how to improve water quality while most of the available water supply is itself heavily contaminated. Moreover, as a result of growing demands for water conservation and water transfers, it is likely that the volume of inflow will likely be substantially diminished in the near future, compounding the task of diluting the growing salinity of the Salton Sea.

Specifically, the bill authorizes:

research (intended to be a pilot project involving construction of small wetland areas to treat small quantities of irrigation drainage from IID); and,

actions (intended to involve treatment of part of the flow of the New and Alamo Rivers by diverting river water through a series of constructed wetlands).

This "constructed wetlands" technology is known to be effective in assisting in the treatment of municipal sewage, but its effectiveness in treating irrigation drainage water is less well-known. If the pilot project works as hoped, the project sponsors eventually plan to construct wetlands along the banks of about 40 miles of the New River. Similar work is presumably proposed for the Alamo River Basin.

There is uncertainty as to whether constructed wetland projects of this nature are subject to the discharge permit provisions of the Clean Water Act. However, the language of the bill exempts any actions taken, not just the constructed wetlands project mentioned above, from jurisdiction under the permit requirements of Section 402 of the Clean Water Act. We understand that the project sponsors wish to avoid litigation similar to that experienced by the East Bay Municipal Utility District in connection with their cleanup of the Penn Mine site in California. However the exemption contained in H.R. 3267 is far too broad. We would prefer that the exemption be dropped. However, we believe the permit exemption language can be made acceptable if it is revised to strictly limit its applicability and if the Committee on Transportation and Infrastructure agrees.

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