TESTIMONY OF

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SUBCOMMITTEE ON WATER AND POWER

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Good morning. My name is Kimberley Delfino, and I am the California Program Director for Defenders of Wildlife. On behalf of our more than 450,000 members, I wish to thank you, Mr. Chairman, and the other members of this Subcommittee for inviting me to testify today on the "Implementation of the California Plan for the Colorado River."

Defenders of Wildlife is committed to the conservation and restoration of the historic Colorado River Delta, which includes the Salton Sea ecosystem. Defenders also supports the efforts of the state of California to reduce its use of Colorado River water, including the transfer of up to 300,000 acre feet of water from Imperial Irrigation District ("IID") to the San Diego County Water Authority ("SDCWA"), Coachella Valley Water District ("CVWD"), and Metropolitan Water District ("MWD") (hereinafter referred to as the "IID water transfer"). Defenders has been working for more than a year to ensure that the IID water transfer proceeds in a way that is not at the expense of the Salton Sea and its surrounding communities, the environment, and the integrity of our state and federal environmental laws. As part of our efforts, we have submitted extensive comments on the environmental documents for the proposed water transfer, participated as parties in the administrative proceeding before the State Water Resources Control Board to approve the transfer of water rights, and are part of the intensive negotiations on legislation involving the transfer pending before the California Legislature. My testimony today will include a discussion of why we believe the Salton Sea is an important resource, the impacts of the proposed water transfer, how we believe the water transfer should proceed, and pending state and federal legislative efforts.

Although I present this statement on the behalf of Defenders of Wildlife, it was prepared in consultation with the Planning and Conservation League, National Audubon Society - California, National Wildlife Federation and Sierra Club California. The effort to protect the Salton Sea has brought together a full range of conservation and recreation organizations committed to preserving and protecting the Salton Sea. See "Joint Statement of Conservation and Recreation Organizations on the Future of the Salton Sea" (April 22, 2002) (Attachment A).

I. BACKGROUND

California's Colorado River Water Use Plan is the result of an unprecedented effort - an ambitious plan for California to reduce its diversions of water from the Colorado River by 600,000 - 800,000 acre feet of water per year. Under the Interim Surplus Guidelines, California will go on a "water diet" for the next 15 years, cutting back its use of Colorado River water until it reaches its original allocation of 4.4 million acre feet per year. Potential beneficiaries of this plan are the other six Colorado River Basin states, the Colorado

River Basin's Indian tribes, Mexico and possibly the long-neglected Colorado River Delta and Gulf of California. While Defenders is extremely concerned about the impact of the Interim Surplus Guidelines on the availability of water to serve the needs of the Colorado River Delta, for purposes of this hearing, I am going to restrict my comments to the proposed IID water transfer.

As part of California's Colorado River Water Use Plan, the four major water districts in Southern California (IID, MWD, CVWD and SCDWA) have joined together to implement the Quantification Settlement Agreement ("QSA"), which includes the IID water transfer. The original proposal was to generate up to 300,000 acre feet of water through a combination of improvements to the irrigation system of IID and on-farm conservation. As I will discuss later, this proposal appears to be shifting from on-farm conservation to potentially fallowing land to generate water.

II. THE SALTON SEA AND THE IID WATER TRANSFER

As would be expected for a project of this scale and complexity, the originally proposed transfer would have significant impacts on natural resources and the environment throughout Southern California. There will be impacts on the Colorado River from the changes in points of diversion. The transfer will have growth-inducing impacts in the San Diego County Water Authority service area, which will have an adverse impact on fish and wildlife in San Diego County. Most dramatically, the transfer will have an enormous, perhaps decisive, impact on the Salton Sea and the environment in both Imperial and Coachella Counties. The decision on this transfer is also a critical decision point for the Salton Sea, and the shape of this transfer could determine the future of the Sea.

The Salton Sea is currently an environmental and recreational resource of the utmost importance, a resource of statewide and national significance. As wetlands in California, Mexico and other parts of the West have disappeared, the Salton Sea ecosystem has become important habitat for hundreds of bird species, and a critical part of the Pacific Flyway. More than 400 species of birds have been recorded at the Salton Sea - 70 percent of all bird species within California. It is this combination of bird diversity and important feeding and breeding habitat that makes the Salton Sea an essential component in maintaining bird populations. At times, the Sea supports 90 percent of California's white pelican population, the only North American inland breeding site for threatened brown pelicans, and more than 90 percent of the North American population of eared grebes. Other endangered and threatened species found at the Sea include the Yuma clapper rail, snowy plover and mountain plover. The Salton Sea ecosystem is a crown jewel of avian biodiversity that must be sustained for future generations.

The Sea also supports an active recreation industry that contributes to the health of the local economy. The wealth of avian biodiversity has made the Salton Sea a popular destination for bird-watchers, and has inspired an annual bird festival. The abundance of waterfowl has also made the Sea popular with hunters. The diversity and abundance of birds at the Sea are due in large part to its productive fishery which includes several popular sportfish, including Tilapia, Sargo, Corvina and Bairdella. More than 400,000 anglers visit the Sea annually for sport and subsistence fishing, drawn by the estimated 160 million fish that live in the Sea today. Other recreation includes boating and other water sports.

The continued viability of the Sea is integrally intertwined with the viability of agriculture, a cornerstone of the local economy. Just as recreational activities based around the Sea contribute to the local economy, agriculture provides water to the Sea and habitat for many species. Without agriculture, the Sea would quickly evaporate.

Unfortunately, if the IID water transfer is approved as originally proposed, the prospects for sustaining and restoring the resources at the Sea are grim. For every acre-foot of water transferred from IID, an acre-foot will be lost at the Salton Sea. At full ramp-up, inflows to the Sea will be reduced by approximately 300,000 acre feet, nearly one-quarter of the Sea's current inflows. The surface area of the Sea will shrink by as much as 50,000 acres.

The transfer - in its original form - could set in motion a process of rapid ecological collapse at the Salton Sea. The reduction of inflows will greatly increase the rate of salinization at the Salton Sea, with an immediate adverse effect on the fisheries there. Although the Salton Sea's fish are currently stressed by the Sea's salinity, nonetheless, it is estimated that the Sea could support fish for as much as another fifty years if inflows remain constant. With the proposed transfer and actions it would trigger, the Sea could become too saline to support fish within little more than a decade.

With the decline of the fisheries and the shrinking of the Sea, there will inevitably be a drastic decline in the astounding bird populations at the Sea. When the fish go, so will the white pelican, brown pelican, black skimmer, and other fish-eating birds. And those birds that do not depend on fish for sustenance may encounter difficulties as well, as the conditions for invertebrates at a hypersaline Salton Sea will differ substantially from those at Mono Lake, which sustains large numbers of invertebrates and invertebrate-eating birds. In addition, the shrinking of the Sea will result in the loss of brooding, roosting and foraging habitat for a number of bird species.

The decline of the Sea as a natural resource will also mean its decline as a recreational resource. Not only will the decline of the fishery mean less anglers, but a shrinking Sea will also become less attractive to other recreationists - the campers who currently enjoy the seaside campsites, the sightseers who admire some of the most beautiful vistas and spectacular sunsets in the California desert.

The transfer will not only cause a precipitous decline in the resources at the Salton Sea, it may well eliminate the possibility of a restoration plan. As I am sure the Salton Sea Authority will testify before the panel, restoration may become technically and financially impractical if inflows are reduced by 300,000 acre feet.

However, impacts from the original IID water transfer proposal are not confined to the Salton Sea. According to the California Colorado River Basin Regional Water Quality Control Board, selenium will be concentrated within IID's drains as runoff from the fields decreases, and those increased concentrations will pose a hazard to whatever wildlife remains or inhabits a restored Sea and the drains in the Imperial Valley. In addition, exposed seabed could cause dust emissions in both the Imperial and Coachella Valleys comparable to those at Owens Lake, creating an environmental disaster in an area that is already plagued with serious air quality issues. The mitigation that will inevitably be required for air quality problems of this magnitude could cost hundreds of millions of dollars. Thus, it is not only the environment of the Salton Sea that is threatened by the original transfer proposal.

Of course, in theory, it might be possible to mitigate for these impacts. However, the mitigation measures proposed for the original version of the water transfer fall into two categories: the inadequate and the improbable.

Alternative 1, set forth in the draft water transfer Habitat Conservation Plan ("HCP"), appears to be the mitigation proposal preferred by IID. This alternative is a proposal to provide hatcheries and fish ponds adequate to support a portion of the fish-eating birds that now rely on the Sea for 75 years. As has been

demonstrated before the State Water Resources Control Board proceeding and detailed in voluminous comments by the conservation community, this proposal is riddled with unanswered questions, technically flawed, and is still unfunded. Not surprisingly, it appears that the California Department of Fish and Game and U.S. Fish and Wildlife Service will not permit this alternative as part of the water transfer HCP.

This leaves us with HCP Alternative 2, which would provide the Sea with water to make up for reduced inflows by fallowing land and would minimize or eliminate many of the most severe environmental impacts. In fact, if HCP Alternative 2 is adopted, or if the transfer were simply implemented via fallowing, our concerns regarding environmental impacts would likewise be minimized.

However, we would be remiss to characterize fallowing on a large scale in the Imperial Valley as a "simple" solution. This solution is hardly simple. In an area that is largely dependent upon agriculture and has an unemployment rate hovering around 25%, the idea of taking large amounts of land out of production is not an easy one for the community to accept, especially when community fears are fanned by pronouncements of overblown job loss figures. IID's own Citizen Advisory Commission estimates that job loss from fallowing would be more along the lines of 500 jobs rather than the estimate of more than 1,400 jobs. See Executive Summary, "Independent Analysis of the Economic Impact Studies in the IID Water Conservation and Transfer Project EIR/EIS," prepared for the Community Advisory Commission of the IID (April 9, 2002) (Attachment B). Third party impacts can be addressed, but they need to be sufficiently evaluated and a plan needs to be implemented and funded, something that had not yet been done by IID.

III. HOW SHOULD THE IID WATER TRANSFER BE STRUCTURED TO ADDRESS ENVIRONMENTAL AND ECONOMIC CONCERNS?

Returning to the question of how to structure the water transfer, it is clear that a transfer proposal using on-farm conservation will degrade the Salton Sea as a fish, wildlife, and recreational resource and possibly preclude its restoration, worsen the water quality problems in the drains and rivers of the Imperial Valley and impair their beneficial uses, and potentially cause severe dust storms in the Imperial and Coachella Valleys. Nevertheless, despite these impacts, there are some proponents of the transfer who suggest that somehow these impacts are reasonable when viewed in the context of the transfer's importance to California in reducing its use of Colorado River water. And as we will no doubt hear today from the Department of the Interior, the Interim Surplus Guidelines are contingent upon execution of the QSA by the end of this year. According to the Department of the Interior, if the QSA is not executed in a timely fashion, the Guidelines will be suspended and Southern California will lose its access to surplus Colorado River water. Something else to keep in mind is that this water transfer will, as a practical if not legal matter, set a precedent for future large-scale water transfers.

Defenders supports the objective of reducing California's reliance on surplus Colorado River water. We are aware that the Interim Surplus Guidelines appear to be contingent upon the QSA, although it also appears that California could meet at least the first and possibly the second benchmark of those Guidelines with existing programs, suggesting that the deadline may be less inflexible than it appears at first glance. And we certainly agree that the water community, including the environmental stakeholders in that community, will look to this transfer for a model of transfers to come.

Indeed, it is precisely the significance of the issues and the high profile of this transfer that makes it all the more important that its environmental consequences are dealt with up front and completely. The reliability and long-term predictability that both IID and the other water agencies seek will not be achieved if this transfer leaves for another day the job of developing mitigation measures for fish and wildlife, water quality,

and air quality impacts whose cost could run into the hundreds of millions of dollars. Looking at the broader water policy implications for California, if transfers are to play an important role in assuring California's future water supply, they must be seen as an efficient, environmentally friendly way to maximize water supplies. Urban water agencies, agricultural communities, and environmental stakeholders will have no desire to imitate this transfer if its legacy is a lifeless Salton Sea and chronic air quality problems in the Imperial and Coachella Valleys.

Given the importance of the issues at stake, both for the environment and the water supply of California, it is critical that this transfer in fact be a model worthy of imitation. Such a model transfer must, of course, fully comply with all environmental laws. A model transfer must maintain inflows to the Salton Sea, so that a restoration plan remains financially and technically feasible. A model transfer must not degrade the air quality of the Imperial and Coachella Valleys, or lead to water quality problems in drainage waters. A model transfer would address growth-inducing impacts at the point of delivery. Finally, a model transfer must address third-party economic impacts in the area of origin.

Unfortunately, the current proposed water transfer does not meet these standards. In particular, much of the information regarding environmental and economic impacts, which is needed to proceed with the transfer, has not been generated by IID. In order for the transfer to proceed, we need more time - to develop a Salton Sea restoration plan; to model potential air quality impacts under different scenarios, including fallowing; and to develop information on third-party impacts under different scenarios. In an ideal world, the solution would be simple - put off the transfer, develop the needed information, and proceed with the transfer only when all impacts are understood and measures to avoid or mitigate for those impacts are funded and ready for implementation. However, unless a way is found to alter the QSA and Interim Surplus Guidelines, that does not appear to be a viable alternative.

In the interest of moving forward, as part of our efforts before the State Water Resources Control Board, Defenders of Wildlife and our conservation partners have put together a proposal for a temporary, conditional approval of the water transfer, to expire on December 31, 2007. This conditional transfer is similar to the recommendation by the Pacific Institute. The temporary, conditional approval would be contingent on the parties enforceable commitment to implement the following elements:

- •The water transferred during the conditional approval period could be generated only by voluntary fallowing of land, such that inflows to the Salton Sea are unaffected by the transfer. Such fallowing would also address farmers' need for financial predictability, and in the initial years of the transfer, the amount of land needed to generate water would be smaller than at peak periods, reducing socio-economic impacts.

- •A plan, developed with broad-based community participation, to invest an appropriate percentage of the transfer revenues into a community development fund, to mitigate for the socio-economic impacts in the Imperial Valley. If studies show that the revenue generated by the transfer does not cover third-party impacts, there needs to be a plan to backfill this difference in costs.

- •A plan, developed with broad-based community participation, to identify and address the growth-inducing impacts of the transfer within the service area of the San Diego County Water Authority.

- •Participation in a process, in conjunction with the federal and state governments and the Salton Sea Authority and in consultation with a broad range of stakeholders, to develop and implement a long-term restoration plan for the Salton Sea.

The temporary, conditional approval described above is intended to enable California to meet the terms of the federal Interim Surplus Guidelines, while allowing time to develop reasonable, sustainable mitigation for impacts the transfer may have on fish and wildlife, water quality and the economy of the Imperial Valley. It would avoid environmental impacts on the Salton Sea by holding inflows at the levels the Sea would receive in the transfer's absence, and it would minimize water quality impacts in the drains, air quality impacts, in the Salton Sea Basin, and growth-inducing impacts in San Diego.

In addition, the five-year period would afford a reasonable time to develop the information needed to provide the foundation for a transfer that could truly be a model. The state and federal governments would have a reasonable period of time in which to develop a long-term, sustainable restoration plan for the Salton Sea. If such a plan is adopted and ready for implementation, the transfer parties could receive approval for a transfer in which the water could be generated by any method so long as the impact on inflows to the Salton Sea is consistent with the restoration plan. This would create an incentive for the transfer parties to direct their efforts toward encouraging the state and federal governments to develop a workable plan. And, there would be time to develop a plan to avoid or mitigate for water and air quality impacts of the transfer, including impacts to IID's drainage system.

IV. PENDING STATE AND FEDERAL LEGISLATION REGARDING THE IID WATER TRANSFER

Even if the water transfer were to proceed with a conditionally-approved transfer, there are still ongoing efforts at both the state and federal level to have both Congress and the California State Legislature pass bills (e.g., H.R. 2764 (Hunter) and SB 482 (Kuehl)) that would, among other things, find that the proposed transfer satisfies federal and state environmental statutes, limits judicial review, provides iron-clad, extraordinary "assurances" to the parties in the water transfer, and removes California's fully protected species statutes as an obstacle to permit approval.

A. Federal Legislation: H.R. 2764

H.R. 2764, introduced by Representative Duncan Hunter (Imperial County), effectively exempts the water transfer and related actions from the federal Endangered Species Act ("ESA"), drastically limits the public's right to judicial review under the ESA and National Environmental Policy Act ("NEPA"), and authorizes funds for unknown "habitat enhancement" projects that appear to do nothing to mitigate impacts from the transfer on species dependent upon the Salton Sea.

B. State Legislation: SB 482

SB 482, introduced by State Senator Sheila Kuehl (Santa Monica), would revise the state water code to allow for long-term fallowing, provide "regulatory assurances" for activities relating to mitigation for the water transfer at the Salton Sea, and would repeal the state fully protected species statute in exchange for some improvements to the California Endangered Species Act ("CESA"). Defenders does not have any objections to the proposed changes to the water code, but has raised objections to the issuance of legislative "assurances" as well as the repeal of the fully protected species statute.

1. *SB 482's Legislative Assurances Language*

SB 482 would authorize the Department of Fish and Game ("DFG") to extend "regulatory assurances" contained in the newly revised Natural Community Conservation Planning ("NCCP") Act (found in SB 107

(Sher)) to the covered activities described in the Salton Sea Conservation Strategy in the Habitat Conservation Plan for the water transfer. These assurances will be provided as long as the plan will not result in a material increase in salinity at the Sea before an unspecified date, does not significantly impact shoreline habitat and desert pupfish at the Sea, and is consistent with the Salton Sea Reclamation Act. This legislative extension of "regulatory assurances" in state law beyond the NCCP Act to a CESA incidental take permit is "extraordinary" as it has not been required for any other incidental take permit issued under CESA. Indeed, such legislative "assurances" under the federal ESA have never been granted by Congress for any project. It is bad policy for the state Legislature to begin giving out special "legislative assurances" for specific projects beyond what is already accorded to permitees under current law.

Furthermore, when the majority of the state environmental community agreed to incorporate limited assurances into the NCCP statute (as part of the negotiations on SB 107), it was only after receiving in exchange the following improvements to the NCCP Act: (1) an improved public participation process; (2) an improved scientific review process; (3) strong standards for the NCCP plan and implementing agreement; (4) the requirement that DFG suspend or revoke an NCCP permit if there is jeopardy to a species or an imbalance between conservation and development; (5) specific determinations by DFG for coverage of species under an NCCP; and (6) the requirement that the plan provides for the conservation of a species. SB 482 would grant assurances for a specified set of covered activities within an incidental take permit, issued under CESA, that does not meet these standards. For these reasons, Defenders opposes this grant of assurances in SB 482

2. *California's Fully Protected Species Statutes*

The California fully protected species ("FPS") statutes strictly prohibit the "take" (e.g., killing) of 37 wildlife species, including some of the most beloved symbols of our state: the imperiled sea otter, golden eagle, California brown pelican, and California condor. Unlike CESA, there are no allowances for any take of a FPS species. If the FPS statutes are repealed, then the 37 species would only be protected under CESA, and "take" would be allowed. Advocates for repeal of the FPS statutes argue that these species would be adequately protected under CESA. However, this is not the case. An examination of CESA reveals significant flaws that must be addressed in order to assure that species will be both protected from extinction and subsequently recovered. From a resource conservation point of view, a repeal of the FPS statutes without such assurances is unacceptable.

For more than a year, the environmental community has advocated for four improvements in CESA in exchange for accepting a repeal of the FPS statutes. First, CESA must be amended to clarify that the definition of take includes habitat destruction. Second, CESA must be amended to reinstate an updated version of a previously sunsetted article that required state agencies to consult with the Department of Fish and Game ("DFG") whenever their projects might affect a listed species or its habitat. It is our understanding that DFG is not reviewing state projects to ensure that they will not impair the recovery of listed species. This is contrary to long-standing CESA policy that state agencies have a duty to conserve (i.e., recover) listed species and their habitat. Third, CESA must be amended to create a comprehensive recovery program. Currently, CESA has a "pilot" recovery program for five species - only one of which, the Sandhill Crane, has a recovery strategy. An endangered species act that fails to include a requirement for recovery planning is only doing half its job. Finally, CESA must be amended to clarify that listed plants are protected from destructive activities. For a more in-depth discussion of these points, I have attached a January 4, 2002, letter to Senator Kuehl from 26 environmental organizations. (Attachment C).

SB 482 would repeal the FPS statutes in exchange for providing only two of the suggested improvements to

CESA - an unfunded recovery program and a less-than-adequate state agency consultation requirement. The refinement of the definition of "take" to include habitat destruction and the inclusion of plants for protection have been omitted from the amended version of this bill. Defenders does not object to the repeal of the FPS statutes, especially in light of the need to proceed with the water transfer. However, we continue to voice our objections to the lack of real improvements to CESA set forth in SB 482 in exchange for a FPS repeal.

C. Is There A Need for Any Federal or State Legislation?

If the IID water transfer were carried out in the manner that Defenders and the Pacific Institute have suggested, there is no need for either Congress or the state legislature to pass bills with environmental sufficiency language or provide regulatory assurances beyond what is already available under current law since the transfer would have a significantly diminished impact on the environment. Of course, there continues to be a need for the state to pass legislation to deal with the state water code and long-term fallowing as well as the state's fully protected species statutes, and for the federal and state government to consider legislation that would address the issue of third party impacts should the cost of the transfer exceed the compensation provided by the water agencies.

V. CONCLUSION

Defenders recognizes, in making our suggested proposal, that this transfer is a piece of a historic effort to resolve decades of disputes over Colorado River water. But consider the alternative. The current transfer proposal evokes the specter for some of the darkest chapters in the history of California water policy - from Owens Lake to Kesterson - and the potential for environmental loss at the Salton Sea is of equally historic proportions. We simply ask that this transfer proceed in a manner that is not at the expense of the Salton Sea and its surrounding communities, the environment, and the integrity of our state and federal environmental laws.

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