

MEMO

TO: SSA Directors and Executive D G. Patrick O'Dowd
FROM: Lisa Moore, Cultivating Conservation
RE: **USDA/Corps Federal Funding Opportunities**
DATE: February 22, 2021

This memo describes our recent efforts to mobilize existing USDA Salton Sea projects, existing barriers to full deployment, and describes actions for the Board's consideration regarding strategies to expand this work. The first page is a summary for Directors already familiar with this work. The following pages provide more detail to Directors who may be new to it. In particular, the memo addresses the following issues:

- (1) Recent inquiries regarding benefits to the Sea and region from the investments in this work to date, and what benefits could be derived from future investments in it. In short, up until 2019, these investments consisted principally of SSA and member agency signing letters in support of USDA funding tools. SSA did not contribute monetarily to grant writing, project implementation or the extensive legislative work that created these federal funding opportunities. The benefits from future investments in this work include securing substantial federal cost share on near-term and long-term Salton Sea projects, an objective strongly supported by our Congressional delegation;
- (2) Key reasons why the Salton Sea and region are very well positioned federally in the current policymaking environment — particularly given the focus on environmental justice and stimulus;
- (3) SSA's current collaborative efforts to expend the remaining \$2 million in the USDA Salton Sea Regional Conservation Partnership Program (RCPP) project and how this would position SSA and member agencies to access further funding through this tool;
- (4) SSA's efforts to work with CNRA to implement CNRA's existing 2017 USDA Watershed Act grant, but which CNRA has not implemented. Instead of implementing this grant, CNRA applied for separate USDA RCPP funding in 2019 that, if awarded, would have required to CNRA to undertake the same work USDA had already funded in the Watershed grant, effectively applying for a grant they already had in hand. (USDA rejected CNRA's 2019 RCPP proposal for this reason, among others.). Directors wrote to CNRA Secretary Crowfoot on May 7, 2020 (copy attached) to set out a recommended path forward. CNRA's delay in using this USDA grant cuts off our access to a roughly \$500 million/year USDA program well suited to the Sea. It diminishes stakeholder credibility with USDA to secure funds and not use them. This memo recommends that CNRA subcontract this existing USDA grant to SSA along with administrative expenses so that SSA can implement this work given that CNRA has failed to do so at our request for almost two years.
- (5) SSA's recent successful efforts to position the Sea favorably for U.S. Army Corps of Engineers funding by securing 2020 Salton Sea WRDA legislation. While USDA may provide good near-term funding opportunities, the Corps may be a very productive funding source for long-term, large scale Salton Sea projects.

(1) SSA and Member Agency Return on Investment in USDA Salton Sea Work

General Manager O’Dowd recently asked for information concerning SSA and its member agencies investments in these USDA RCPP, Watershed Act and 2018 Farm Bill project/legislative efforts. SSA and member agencies’ investment in this work was principally to lend the indispensable local elected and agricultural political support to secure these projects and legislation — largely through sending key supportive advocacy letters to USDA and Congress. No monetary contributions to grant writing, implementation or legislative activities were made.

Cultivating developed the RCPP, the Watershed Act grant and funding source, and the successful two-year 2018 Farm Bill legislative effort prior to our engagement as contractors to SSA. CNRA’s Bruce Wilcox and Imperial Valley Vegetable Growers’ Kay Pricola, were the most actively engaged individuals in these efforts with us, providing critical strategic advice, on-the-ground implementation work, and guidance on an often weekly basis.

Concern was also expressed that, although for a time SSA was asked to account for its invested time in this regard, these pilot projects did not provide reimbursements SSA or member agencies. USDA requires this accounting to demonstrate partner engagement in the project, not to generate reimbursements. Under the law governing these USDA projects at the time (2014-2018), particularly RCPP, they could not be designed to provide funds directly to SSA or member agencies to carry them out. This was made clear to partners at the time. Project funding was required to be allocated directly by USDA with our input to farmers to adopt conservation practices beneficial to the Sea and was successfully expended in this manner.

While the law prior to the 2018 Farm Bill restricted SSA and member agencies’ ability to directly receive USDA funds to carry out Salton Sea projects, these tools were modified by Cultivating in the 2018 Farm Bill to prospectively provide these opportunities. The goal of the work at the time, and as agreed to by SSA and member agencies, was to use these pilot efforts to support an advocacy effort to loosen the then-existing restrictions on using USDA funding directly on the Salton Sea plays in the 2018 Farm Bill, so that the Sea would be broadly eligible to receive USDA funding from 2019 forward.

USDA was selected as a target for this work because its conservation budget is \$6 billion per year and it has a long history of creating well-funded conservation initiatives to benefit agricultural watersheds (e.g., Desert Terminal Lakes, \$500 million; USDA’s Sage Grouse Initiative, approximately \$800 million; Western Lake Erie Initiative, \$70 million). USDA has over 70 of these administratively created conservation initiatives, nearly all of which started with pilot projects akin to those we developed at the Sea.

Given the current policymaking climate — described below — the Salton Sea has never stood in a better position to secure federal funding. However, in order to mobilize these tools prospectively, we need to expend the resources USDA has currently allocated to the Salton Sea in these pilot projects -- tasks described in sections (3) and (4).

(2) Salton Sea is Very Well Positioned Federally

The Salton Sea has never been in a better position to secure federal funding assistance. Vice President Harris was a strong supporter of our efforts to create and mobilize these federal funding

tools. As Senator, Harris signed several advocacy letters to push the administration to use these tools and was a lead cosponsor of our 2018 Farm Bill legislation to expand them.

In addition, the Biden Administration has pledged to focus federal investment to address environmental justice concerns. The Salton Sea raises clear and pressing EJ issues. Moreover, the Interior Department will likely be run by its first Native American Secretary, increasing the prominence within the Department of the impact of the Salton Sea's decline on the Torres Martinez.

Finally, our Congressional delegation is primed to push Salton Sea issues. After years of working with Cultivating, SSA and its member agencies to put these mechanisms in place, they want to see action. Senators Feinstein and Harris led the work to develop the USDA tools. Reps. Ruiz and Vargas have introduced legislation to press for major Salton Sea federal funding on par with the State of California, and recently secured 2020 WRDA legislation to benefit the Sea. And they may have greater authority to secure funding in the future because Congress may soon restore earmarks. House Energy and Water Appropriations Chairwoman Kaptur (D-OH) and her staff recently visited the Salton Sea, and pledged their assistance.

(3) USDA's Regional Conservation Partnership Program (RCPP)

In 2016, Cultivating organized a partnership comprised of SSA, IID, CNRA, Vegetable Growers and the Farm Bureau to develop the Salton Sea Regional Conservation Partnership Program (RCPP) project. In the program, partners apply for USDA funding that will be provided on a voluntary basis to farmers to accomplish partnership conservation priorities. At the time, the law did not allow us to target funding directly to the playa, so we proposed directing USDA conservation funding to farmers to undertake air and water quality practices and to restore wetlands. Under the rules of the program at the time, funding did not move through SSA or partners; rather, we worked with USDA to direct the funding to farmers willing to adopt practices that were broadly beneficial to the Sea.

In the project, USDA pledged \$7.5 million to these ends, funds which have nearly been expended. We still have \$2 million in wetlands restoration funding and are actively working with USDA to spend these funds. These funds flow through USDA and may be provided to a landowner or a Tribe willing to restore land to wetlands. The \$2 million in funding may be allocated to cover the costs for an easement on the proposed wetlands, and restoration of those lands to wetland function. If used on tribal lands, USDA enters into a 30-year contract on the wetlands rather than an easement (in recognition of the government-to-government relationship between Tribal Nations and the federal government). Because these funds need to be expended within the next year, a tribal project could be the easiest to undertake, as it would avoid the time required to secure an easement (typically 18 months).

Once these funds are expended, SSA could apply to USDA for renewal of this agreement and additional funding pursuant to a non-competitive renewal authority Cultivating added to the RCPP program in the 2018 Farm Bill. Per other changes secured by Cultivating, administrative costs for a future RCPP may be provided to partners like SSA. These costs were not allowable under the original program. This is a viable funding source, but for relatively smaller projects because USDA caps RCPP project funding at \$10 million per project.

(4) USDA's Watershed Protection and Flood Control Program (Watershed Act)

The Watershed Act is a USDA authority that Congress had defunded in 2010. Cultivating identified it as a good program authority for the Salton Sea because the law as written permitted funds to be used on public lands, had no per project funding caps, and was relatively easy to administer. Accordingly, Cultivating set out to restore funds to the program through our independent legislative advocacy. Those efforts took Watershed Act funding from \$0 in 2015 to \$500 million/year 2021. The program now on strong Congressional footing.

In 2017, Cultivating drafted a successful proposal with Bruce Wilcox for CNRA to secure the Salton Sea access to this funding source, proposing to cost share on SCH-type measures (shallow water habitat/air quality). The program first requires a project sponsor like CNRA to complete a Watershed Plan of the proposed project — simply an environmental assessment (EA) of it. Cultivating secured a \$650,000 grant for CNRA to do that plan. Notably, this is the hardest step. Once a sponsor secures access to the program via plan funding, USDA is likely to fund project construction. USDA officials encouraged us to use this program at the Sea from among the different USDA options — and they continue to do so.

Once a plan is completed, the sponsor can then seek design assistance for the project and ultimately construction assistance. Unlike all other federal programs of a similar nature, USDA pays 100% of both the plan and design, and 50/50 cost share on construction of fish and wildlife habitat improvements.

SSA staff met with CNRA in November 2019 in order to brief the agency on these USDA tools, including the Watershed Act grant and to offer SSA's assistance in mobilizing them. Since CNRA was then coordinating the development of a Corps of Engineers EA for Salton Sea projects, we suggested that we work together to coordinate these similar efforts and expeditiously complete the USDA plan. The Corps was open to doing so.

CNRA decided not to coordinate these USDA and Corps planning efforts. We then urged CNRA to undertake the Watershed Plan independently of the Corps work, but no action was taken. A month later, in December 2019, CNRA applied to USDA through the Regional Conservation Partnership Program (RCPP) for effectively the same project that was the subject of the existing USDA CNRA Watershed Act grant. That CNRA RCPP request, if awarded, would have required CNRA to prepare precisely the same Watershed Plan CNRA was already funded by USDA to do. SSA was only consulted on this proposal three days before CNRA submitted it to USDA. We advised CNRA that the proposal was duplicative of the Watershed Act grant and did not meet other USDA requirements. We urged CNRA to focus its resources on implementing the grant funding it already had in hand. CNRA submitted the RCPP proposal and USDA rejected it in March 2020.

In view of the challenges the CNRA has experienced in mobilizing these USDA tools, one option for the Board to consider is to request funding from the legislature to implement this CNRA grant as a subcontractor. The steps that need to be taken to implement the grant are to identify the proposed project should be covered in the Watershed Plan; public engagement; contract out the plan; oversee its development; and work with USDA to ensure the agency approves it. Since the Corps is currently undertaking an EA of SSMP now, there should be opportunities to coordinate and expedite this USDA plan.

Again, once there is a USDA-approved Watershed Plan for Salton Sea projects, CNRA or SSA as a subcontractor can then apply to USDA for 50/50 implementation funding for those projects. As noted above, USDA does not provide plan funding if they do not intend to fund implementation of the plan.

(5) Corps of Engineers Feasibility Study

Accessing Corps funding requires several legislative steps, including first securing a feasibility study authorization, completing that study and then securing Congressional approval/funding for construction. The Corps is already a key player at the Sea, with federal permitting authority. It undertook the federal NEPA EIS analysis on SCH and is currently undertaking a NEPA EA on the State's Salton Sea Management Plan. Accordingly, SSA has worked to put Corps funding in play.

In particular and at the direction of SSA, Cultivating and BBK's Lowry Crook, a former senior Corps official and an expert in the field, worked with Congressmen Ruiz and Vargas to authorize in the 2020 Water Resources Development Act (WRDA) a Corps feasibility study for a "Salton Sea perimeter lake or subset thereof."

While the Salton Sea has been heavily studied, a Corps-approved feasibility study is a legal prerequisite to securing such construction funding. Congress strictly limits the authorization of new studies, but we were able to modify a WRDA Salton Sea provision in an older WRDA law to authorize this new perimeter lake provision. The new authorization included in WRDA 2020 allows the Corps to initiate a federal study of the perimeter lake (or subset), or to approve a similar study conducted and funded by state or local authorities.

SSA requested this provision to ensure that the Corps could approve state or locally-conducted studies of a perimeter lake, thereby opening the door to Corps construction funding for that project. It also would allow the Corps to undertake such a study itself, which would have the same effect.

One option moving forward would be for SSA to seek such a Corps-funded study on the larger perimeter lake or appropriate subset/phase thereof. We would need to secure federal appropriations and a "new start" authorization for the Corps to directly undertake a feasibility study of a larger perimeter lake project. Those studies are generally cost-shared 50/50 between the Corps and the local sponsor and can cost up to a maximum of \$3 million. Alternatively, a non-federal feasibility study could be funded by a local sponsor and subsequently approved by the Corps, opening up the studied project to Corps construction funding.