

AMENDED IN SENATE JUNE 2, 2009
AMENDED IN SENATE MAY 4, 2009
AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 51

Introduced by Senator Ducheny
(Coauthor: Senator Steinberg)
(Coauthors: Assembly Members V. Manuel Perez and Salas)

January 13, 2009

An act to add the heading to Article 1 (commencing with Section 2930) of, and to add Article 2 (commencing with Section 2940) to, Chapter 13 of Division 3 of, the Fish and Game Code, relating to the Salton Sea Restoration Council.

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as amended, Ducheny. Salton Sea Restoration Council.

Existing law requires the Secretary of the Natural Resources Agency, in consultation with the Department of Fish and Game, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and a specified advisory committee, to undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. Existing law establishes the Salton Sea Restoration Fund, which is administered by the Director of Fish and Game, and requires the moneys in that fund to be expended, upon appropriation by the Legislature, for various actions on behalf of the Salton Sea, including the implementation of the preferred Salton Sea restoration alternative.

This bill would establish the Salton Sea Restoration Council ~~as a state agency~~ in the Natural Resources Agency to ~~implement~~ *evaluate* certain

~~preferred alternative activities program alternatives set forth in the agency’s Salton Sea Ecosystem Restoration Program, to develop and implement, or finance, additional pilot or demonstration projects to improve the water quality of the Salton Sea, to restore the Salton Sea ecosystem, and to take other actions to enhance the sea and would require the council, by January 1, 2011, to recommend to the Legislature a restoration plan for the Salton Sea based on one of those alternatives.~~

The bill would prescribe requirements relating to the composition and administration of the council. The council would be required to include an executive committee, ~~a science committee,~~ a local government forum, and a stakeholder forum, as specified. *The executive committee would be required to serve as the governing body of the council. The Department of Water Resources would be required to provide support to the council, subject to an appropriation for that purpose.*

~~The executive committee would be required to serve as the governing body of the council, and would be required to provide guidance and oversight on behalf of the restoration program. The Department of Fish and Game would be required to provide staff services that the council requires to carry out its activities and to enter into interagency agreements with the Department of Water Resources and other state agencies to provide staff services.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

4
5 Article 1. General Provisions

6
7 SEC. 2. Article 2 (commencing with Section 2940) is added
8 to Chapter 13 of Division 3 of the Fish and Game Code, to read:

9
10 Article 2. Salton Sea Restoration Council

11
12 2940. The Legislature finds and declares all of the following:

1 (a) The Salton Sea is California’s largest inland water body with
2 beneficial uses that include fisheries and wildlife habitat,
3 preservation of endangered species, and a repository for agricultural
4 drainage.

5 (b) The Salton Sea ecosystem is a critical link on the
6 international Pacific Flyway and supports over 400 species of
7 birds.

8 (c) The Salton Sea is threatened by increasing salinity and
9 reduced inflows. These changes increasingly threaten unparalleled
10 wildlife resources at the sea, as well as air quality in the region.

11 (d) In cooperation with local governments, nonprofit
12 organizations, private business, and the public, the Salton Sea
13 Restoration Council can help protect wildlife habitats and
14 endangered species, improve water and air quality, and enhance
15 recreational opportunities in the region.

16 2941. Unless the context otherwise requires, the definitions
17 set forth in this section govern the construction of this article.

18 (a) “Agency” means the Natural Resources Agency.

19 ~~(b) “Controlled eutrophication project” means a nutrient~~
20 ~~reduction process that assimilates nutrients into algal biomass, and~~
21 ~~physically removes or harvests the algal biomass from the water~~
22 ~~column.~~

23 ~~(c)~~

24 (b) “Council” means the Salton Sea Restoration Council.

25 ~~(d) “Final PEIR”~~

26 (c) “*Draft PEIR*” means the Natural Resources Agency’s Salton
27 Sea Ecosystem Restoration Program ~~Final Draft~~ Programmatic
28 Environmental Impact Report, dated ~~May 2007~~ *October 2006*.

29 ~~(e)~~

30 (d) “Habitat mosaics” means two or more proximate habitat
31 types, such as saltwater shoreline abutting riverine deltas and
32 irrigated farmland.

33 ~~(f)~~

34 (e) “Salton Sea watershed” means the geographic boundaries
35 of the Salton Sea basin, defined as the United States Geologic
36 Survey Hydrologic Unit 18100200 (“Salton Sea”).

37 ~~(g)~~

38 (f) “Sea” means the Salton Sea.

39 ~~(h)~~

1 (g) “Secretary” means the Secretary of the Natural Resources
2 Agency.

3 (i) ~~“Upper Basin” refers to the four Colorado River states of the~~
4 ~~Upper Division, including Colorado, New Mexico, Utah, and~~
5 ~~Wyoming.~~

6 (j) ~~“Upper Basin selenium reduction projects” means projects~~
7 ~~of the Gunnison Basin Task Force and Grand Valley Selenium~~
8 ~~Task Force and other similar Upper Basin source control projects~~
9 ~~that could decrease the total amount of selenium in the inflows to~~
10 ~~the Salton Sea.~~

11 (k)
12 (h) “Vector management” means services that eliminate or
13 reduce the risk of illness caused by any organism transporting a
14 pathogen.

15 2942. There is in the Natural Resources Agency the Salton Sea
16 Restoration Council, which is established as a state agency to carry
17 *Council*. out, to the maximum extent possible, all of the following,
18 working in collaboration with local governments and interested
19 parties:

20 (a) ~~Give first priority to implementing each of the agency’s~~
21 ~~Salton Sea Ecosystem Restoration Program Preferred Alternative~~
22 ~~“Period I” activities, as described in Chapter 3 of Volume I of the~~
23 ~~Final PEIR, to the extent that these activities have not already been~~
24 ~~completed by other entities. The activities identified in “Period I”~~
25 ~~include conducting a demonstration project, “early start habitat,”~~
26 ~~conducting additional biological, inflow, sediment quality, water~~
27 ~~quality, and air quality investigations, conducting geotechnical~~
28 ~~and hazards surveys and analyses, coordinating with the Torres~~
29 ~~Martinez Band of Desert Cahuila Indians and other stakeholders,~~
30 ~~executing land access and utility agreements, and preparing project~~
31 ~~level environmental documentation and final design.~~

32 (b) ~~Implement, as funding is made available for those purposes,~~
33 ~~the remaining priorities identified in subdivisions (c) to (k),~~
34 ~~inclusive.~~

35 (c) ~~Develop and implement or finance additional pilot or~~
36 ~~demonstration projects to assess the efficacy of methods to improve~~
37 ~~water quality of the Salton Sea, including, but not limited to, both~~
38 ~~of the following:~~

- 39 (1) ~~Controlled eutrophication projects.~~
40 (2) ~~Upper Basin selenium reduction projects.~~

- 1 ~~(d) Restore the Salton Sea ecosystem.~~
- 2 ~~(e) Permanently protect the fish and wildlife dependent on the~~
- 3 ~~Salton Sea ecosystem.~~
- 4 ~~(f) Restore the long-term stable aquatic and shoreline habitat to~~
- 5 ~~achieve the historic levels and the diversity of fish and wildlife~~
- 6 ~~that depend on the Salton Sea.~~
- 7 ~~(g) Eliminate air quality impacts from the restoration projects~~
- 8 ~~using the best available technology as defined by the South Coast~~
- 9 ~~Air Quality Management District and the Imperial County Air~~
- 10 ~~Pollution Control District.~~
- 11 ~~(h) Protect water quality.~~
- 12 ~~(i) Maintain the sea as a vital link along the international Pacific~~
- 13 ~~Flyway.~~
- 14 ~~(j) Preserve local tribal heritage and cultural values associated~~
- 15 ~~with the sea.~~
- 16 ~~(k) Eliminate noxious odors and other water and air quality~~
- 17 ~~problems.~~
- 18 ~~(l) Implement the agency's Salton Sea Ecosystem Restoration~~
- 19 ~~Program Preferred Alternative, as revised during the~~
- 20 ~~implementation process, working in collaboration with local~~
- 21 ~~governments and interested parties to address funding constraints~~
- 22 ~~and other related matters.~~
- 23 ~~2943. The council may take into consideration, to the extent~~
- 24 ~~each is compatible with the actions described in Section 2942,~~
- 25 ~~both of the following:~~
- 26 ~~(a) Project components that promote the sea as a tourist~~
- 27 ~~destination and recreational area.~~
- 28 ~~(b) Project components that are compatible with economic~~
- 29 ~~development associated with the restoration plan.~~
- 30 ~~2943. (a) The council shall evaluate the program alternatives~~
- 31 ~~described in Chapter 3 of Volume I of the Draft PEIR. On or before~~
- 32 ~~January 1, 2011, the council shall recommend to the Legislature~~
- 33 ~~a restoration plan for the Salton Sea based on one of those~~
- 34 ~~alternatives.~~
- 35 ~~(b) The council's recommended restoration plan shall address~~
- 36 ~~both of the following:~~
- 37 ~~(1) Existing statutory and contractual obligations of the state,~~
- 38 ~~giving particular consideration to issues relating to air quality~~
- 39 ~~and wildlife habitat in and around the Salton Sea.~~

1 (2) *The state’s ability to finance a restoration plan, giving*
 2 *consideration to potential nonstate sources of funding.*
 3 (c) *The restoration plan shall include a financing plan that*
 4 *provides detailed information on projected expenditures and*
 5 *sources of funding.*
 6 2944. (a) The council shall consist of the following groups:
 7 (1) An executive committee.
 8 ~~(2) A science committee.~~
 9 ~~(3)~~
 10 (2) A local government forum.
 11 ~~(4)~~
 12 (3) A stakeholder forum.
 13 (b) The executive committee shall consist of 14 voting members
 14 and eight nonvoting members, appointed or designated as follows:
 15 (1) The 14 voting members of the executive committee shall
 16 consist of all of the following:
 17 (A) The Director of Fish and Game.
 18 (B) The Director of Water Resources.
 19 (C) The Director of Parks and Recreation.
 20 (D) The Chairperson of the State Water Resources Control
 21 Board.
 22 (E) The Chairperson of the State Air Resources Board.
 23 (F) *The Director of Finance.*
 24 (G) *The Secretary of the Natural Resources Agency.*
 25 (H) *The Treasurer.*
 26 ~~(I)~~
 27 (I) One public member appointed by the Governor, who is not
 28 an elected official and who represents a statewide public health
 29 organization.
 30 ~~(J)~~
 31 (J) One public member appointed by the Speaker of the
 32 Assembly, who is not an elected official and who represents a
 33 statewide hunting or fishing organization.
 34 ~~(K)~~
 35 (K) One public member appointed by the Senate Committee on
 36 Rules, who is not an elected official and who represents a statewide
 37 environmental organization.
 38 ~~(L)~~
 39 (L) One member from, and selected by, the Imperial County
 40 Board of Supervisors, if that board agrees to do so.

- 1 ~~(J)~~
- 2 (M) One member from, and selected by, the Riverside County
- 3 Board of Supervisors, if that board agrees to do so.
- 4 ~~(K)~~
- 5 (N) One member from, and selected by, the Board of Directors
- 6 of the Coachella Valley Water District, if that board agrees to do
- 7 so.
- 8 ~~(L)~~
- 9 (O) One member from, and selected by, the Board of Directors
- 10 of the Imperial Irrigation District, if that board agrees to do so.
- 11 ~~(M)~~
- 12 (P) One member selected by the Tribal Council of the Torres
- 13 Martinez Band of Desert Cahuilla Indians, if that council agrees
- 14 to do so.
- 15 ~~(N)~~
- 16 (Q) One member selected by the Tribal Council of the Cabazon
- 17 Band of Mission Indians, if that council agrees to do so.
- 18 (2) The members appointed pursuant to subparagraphs ~~(F)~~ (I)
- 19 to ~~(H)~~ (K), inclusive, of paragraph (1) shall serve one term of four
- 20 years, and may be reappointed to one additional term.
- 21 (3) A state, local, or tribal official who is a member of the
- 22 executive committee may designate a member of his or her
- 23 executive staff to vote on his or her behalf and otherwise discharge
- 24 the duties of the member when the member is not in attendance.
- 25 Notice of this designation shall be promptly communicated in
- 26 writing to the chairperson of the executive committee.
- 27 (4) The nonvoting members of the executive committee shall
- 28 consist of all of the following, as they may be available:
- 29 (A) The lead scientist.
- 30 (B) One representative of the United States Environmental
- 31 Protection Agency.
- 32 (C) One representative of the United States Bureau of
- 33 Reclamation.
- 34 (D) One representative of the United States Fish and Wildlife
- 35 Service.
- 36 (E) One representative of the United States Army Corps of
- 37 Engineers.
- 38 (F) One representative of the United States Geological Survey.
- 39 (G) One representative of the *federal* Bureau of Land
- 40 Management.

1 (H) One representative of the United States Department of
2 Defense.

3 ~~(e) (1) The science committee shall consist of the lead scientist
4 and national and locally recognized experts familiar with
5 large-scale wetlands and marine restoration efforts and
6 knowledgeable about the application of adaptive management
7 protocols and long-term monitoring. The science committee shall
8 also include experts in dike design and dredging, water treatment,
9 and hydraulics.~~

10 ~~(2) (A)~~

11 (c) (1) The lead scientist shall be appointed by the United States
12 Geological Survey Salton Sea Science Office, if that office agrees
13 to do so.

14 ~~(B)~~

15 (2) If the United States Geological Survey Salton Sea Science
16 Office does not appoint the lead scientist, the lead scientist shall
17 be appointed by the executive committee.

18 ~~(C) The lead scientist shall nominate other experts for
19 membership on the science committee, subject to confirmation by
20 the executive committee.~~

21 (d) The local government forum shall include elected
22 representatives from within the Salton Sea watershed, if the
23 governing body of the respective local government agrees to
24 appoint a designee to the forum, and may include local air pollution
25 control officials. The council shall request the Salton Sea Authority
26 to assist the council by doing all of the following:

27 (1) Inviting local elected representatives to join the forum.

28 (2) Convening and organizing regular meetings of the forum.

29 (3) Transmitting information from the executive committee to
30 the forum.

31 (4) Transmitting recommendations and suggestions from the
32 forum to the executive committee.

33 (e) The stakeholder forum shall consist of interested parties, as
34 determined by the executive committee, with demonstrated
35 long-term, ongoing interest in the restoration plan and shoreline,
36 representing the following categories:

37 (1) Persons associated with local businesses and community
38 service districts.

39 (2) Farmers.

40 (3) Persons associated with environmental organizations.

1 (4) Persons associated with public access and recreational
2 interests.

3 (5) Persons associated with public infrastructure.

4 (6) Community advocates.

5 (7) Persons associated with geothermal companies.

6 (8) Persons associated with public works.

7 (9) Public health officials.

8 (10) Tribal and elected local and state officials.

9 2945. (a) (1) The executive committee shall serve as the
10 governing body of the council and shall provide overall guidance
11 and oversight on behalf of the restoration program. The members
12 of the executive committee shall serve without compensation.

13 ~~(2) The executive committee shall provide the overall leadership
14 for the planning of the restoration program. The Department of
15 Fish and Game shall implement and be responsible for all
16 components of the planning, including, but not limited to, all of
17 the following:~~

18 ~~(A) Overall plan design.~~

19 ~~(B) Project proposal review and selection.~~

20 ~~(C) Contracting.~~

21 ~~(D) Land access and acquisition of easements.~~

22 ~~(E) Project management.~~

23 ~~(F) Biological and physical monitoring, including air quality.~~

24 ~~(G) Public participation and outreach.~~

25 ~~(H) Public policy impacts and analysis.~~

26 ~~(I) Budgeting.~~

27 ~~(J) Dispute resolution.~~

28 ~~(K) Integration of the planning process with air quality
29 management, public health, and other regulatory entities.~~

30 ~~(L) Governmental relations.~~

31 ~~(3)~~

32 (2) The executive committee shall make decisions by a
33 ~~two-thirds~~ majority of the total number of voting members. If a
34 conflict exists, a voting member shall recuse himself or herself
35 from voting on an item.

36 ~~(4)~~

37 (3) (A) The voting members of the executive committee shall
38 elect, annually from among the voting members, a chairperson, a
39 vice chairperson, and other officers as necessary. The officers may
40 be reelected.

1 (B) The offices of chairperson and vice chairperson shall not
 2 be held concurrently by any of the persons in the following
 3 categories:

4 (i) Persons identified in subparagraphs (A) to ~~(E)~~ (H), inclusive,
 5 of paragraph (1) of subdivision (b) of Section 2944.

6 (ii) Persons identified in subparagraphs ~~(F) to (H)~~ (I) to (K),
 7 inclusive, of paragraph (1) of subdivision (b) of Section 2944.

8 (iii) Persons identified in subparagraphs ~~(I) to (N)~~ (L) to (Q),
 9 inclusive, of paragraph (1) of subdivision (b) of Section 2944.

10 (C) If the office of chairperson or vice chairperson becomes
 11 vacant, a new chairperson or vice chairperson shall be elected by
 12 the voting members of the executive committee to serve for the
 13 remainder of the term.

14 (D) Ten of the voting members shall constitute a quorum for
 15 the transaction of the business of the executive committee. The
 16 executive committee shall adopt rules, regulations, and procedures
 17 for the conduct of business by the executive committee.

18 (5) The executive committee shall hold the majority of its
 19 regularly scheduled meetings within the Salton Sea watershed.

20 ~~(b) The science committee shall do all of the following:~~

21 ~~(1) Provide best available science and engineering oversight to~~
 22 ~~the overall planning and implementation processes.~~

23 ~~(2) Provide periodic review of local technical investigations~~
 24 ~~pertaining to the restoration plan design and implementation.~~

25 ~~(3) Consult with and advise the stakeholder forum, under the~~
 26 ~~direction of the lead scientist.~~

27 ~~(4) Provide guidance on ongoing short-term planning activities.~~

28 ~~(5) Develop a science program for the collection, synthesis, and~~
 29 ~~dissemination of best available science to support long-term~~
 30 ~~restoration activities and adaptive management.~~

31 ~~(e)~~

32 (b) The local government forum shall facilitate communication
 33 between local governments and landowners, the executive
 34 committee, and the stakeholder forum on the progress of plan
 35 development and implementation.

36 ~~(d)~~

37 (c) (1) The stakeholder forum shall provide ongoing, publicly
 38 derived input to the executive committee relating to habitat
 39 objectives and actions, types and levels of public access, and
 40 integration of air quality management and habitat restoration.

1 (2) The stakeholder forum shall assist the executive committee
2 and other council members to gain a broader understanding of
3 public and interest group perspectives.

4 (3) The stakeholder forum shall provide focused review and
5 discussion, and shall seek to achieve consensus on significant
6 matters, including the following:

7 (A) Discussion and general agreement on design opportunities
8 and constraints, and integration of the habitat, public access, and
9 air quality management objectives.

10 (B) Public access and recreational components.

11 (C) Opportunities for economic development.

12 (D) Habitat mosaics and location.

13 (E) Vector management and predator control.

14 ~~(e)~~

15 ~~(d) All members of the executive committee and the science~~
16 ~~committee may be reimbursed for their actual and necessary~~
17 ~~expenses, including travel expenses, incurred in attending meetings~~
18 ~~of the council and the respective committee and carrying out the~~
19 ~~duties of their office.~~

20 ~~(f)~~

21 (e) The Salton Sea Restoration Council may do the following:

22 (1) Sue and be sued.

23 (2) Enter into contracts pursuant to Article 4 (commencing with
24 Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of
25 the Government Code, for services requiring knowledge,
26 experience, and ability not possessed by the council's staff.

27 (3) Enter into other agreements with public agencies, private
28 entities, and persons necessary for the proper discharge of its duties.

29 ~~(g)~~

30 (f) (1) Only funds deposited in the Salton Sea Restoration Fund
31 or nonstate funds may be expended to carry out this article.

32 (2) The status of the Salton Sea Restoration Fund shall be
33 included in the Governor's proposed annual budget document.

34 ~~(3) The council shall advise the Director of Fish and Game with~~
35 ~~regard to the expenditure of funds from the Salton Sea Restoration~~
36 ~~Fund.~~

37 2946. (a) (1) The secretary shall select, in consultation with
38 the executive committee, the executive director of the council.

39 (2) The executive director shall be exempt from civil service
40 and shall serve at the pleasure of the executive committee.

1 (3) For purposes of this article, the executive director shall be
2 an employee of the Natural Resources Agency.

3 ~~(b) The Department of Fish and Game shall provide the staff~~
4 ~~services, using staff currently dedicated to Salton Sea activities or~~
5 ~~other staff provided by legislative action, that the council requires~~
6 ~~to carry out its functions, including, but not limited to, all of the~~
7 ~~following:~~

8 ~~(1) Administering grants and expenditures made available to~~
9 ~~the council from the Salton Sea Restoration Fund or other sources,~~
10 ~~including, but not limited to, block grants from other state boards,~~
11 ~~commissions, or departments.~~

12 ~~(2) Administering contracts.~~

13 ~~(3) Arranging meetings, agendas, and other administrative~~
14 ~~functions.~~

15 ~~(4) Communication and public outreach, including all of the~~
16 ~~following:~~

17 ~~(A) Public meetings with interested parties, presentations, and~~
18 ~~workshops.~~

19 ~~(B) A regularly updated project-specific Web site.~~

20 ~~(C) Electronic mail and paper newsletters in English and~~
21 ~~Spanish.~~

22 ~~(5) Conducting biological investigations.~~

23 ~~(e) The Director of Fish and Game and the Director of Water~~
24 ~~Resources shall enter into interagency agreements with each other~~
25 ~~to provide the staff service, using staff currently dedicated to Salton~~
26 ~~Sea activities or other staff provided by legislative action, to carry~~
27 ~~out the functions of the council.~~

28 ~~(d) The Director of Fish and Game shall enter into interagency~~
29 ~~agreements with other state agencies to provide the staff services,~~
30 ~~using staff currently dedicated to Salton Sea activities or other~~
31 ~~staff provided by legislative action, to carry out the functions of~~
32 ~~the council.~~

33 *(b) The Department of Water Resources shall provide support*
34 *to the council, subject to an appropriation by the Legislature from*
35 *the Salton Sea Restoration Fund for that purpose.*

36 2947. (a) The council's jurisdiction is limited to the Salton
37 Sea watershed within the State of California.

38 (b) This article does not grant to the council any regulatory
39 authority, including any of the following authority:

40 (1) The authority to regulate land use.

1 (2) Any authority to regulate activities on land, unless the
2 regulation is carried out pursuant to an agreement with an owner
3 of an interest in the land.

4 (3) Authority over water rights held by others.

5 (4) Any air quality regulatory authority.

6 (c) (1) Nothing in this article interferes with or prevents the
7 exercise of authority by a public agency to carry out its programs,
8 projects, or responsibilities.

9 (2) Nothing in this article affects requirements imposed under
10 any other provision of law.

O