

AMENDED IN SENATE JUNE 21, 2011

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 939**

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**Introduced by Assembly Member V. Manuel Pérez**

February 18, 2011

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~~An act to amend Sections 71100 and 71103.5 of, and to add Section 71103.6 to, the Public Resources Code, relating to the environment. An act to repeal and add Article 2 (commencing with Section 2940) of Chapter 13 of Division 3 of the Fish and Game Code, relating to the Salton Sea.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, V. Manuel Pérez. ~~Environment: New River Water Quality, Public Health, and River Parkway Development Program.~~ *Salton Sea restoration.*

*(1) Existing law establishes the Salton Sea Restoration Council as a state agency in the Natural Resources Agency to oversee the restoration of the Salton Sea.*

*This bill would eliminate the council, and assign duties relating to the restoration of the Salton Sea to the Salton Sea Authority, a joint powers authority. By imposing duties on a local joint powers authority, the bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law requires the California-Mexico Border Relations Council, contingent upon the execution of an agreement with the City of Calexico to provide the necessary funding, to develop a strategic plan to guide the implementation of the New River Improvement Project containing specified elements:~~

~~This bill would require the council to establish the New River Water Quality, Public Health, and River Parkway Development Program to coordinate the funding for, and implementation of, specified recommendations from the strategic plan, and certain programs and projects identified by the council. The bill would require state agencies that fund the activities of the New River Improvement Project to make all necessary efforts to integrate and align their contractual and administrative requirements for financial support to meet the goal of this program.~~

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

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

1     SECTION 1. Article 2 (commencing with Section 2940) of  
2 Chapter 13 of Division 3 of the Fish and Game Code is repealed.

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

5  
6                     Article 2. Salton Sea Restoration

7  
8     2940. The Legislature finds and declares all of the following:

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

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

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

4 (d) *In cooperation with others, the Salton Sea Authority can*  
5 *help protect wildlife habitats and endangered species, improve*  
6 *water and air quality, and enhance recreational opportunities in*  
7 *the region.*

8 (e) *In restoring the Salton Sea, it is the intent of the Legislature*  
9 *to do all of the following:*

10 (1) *Permanently protect fish and wildlife that are dependent on*  
11 *the Salton Sea ecosystem.*

12 (2) *Restore the long-term stable aquatic and shoreline habitat*  
13 *for fish and wildlife that depend on the Salton Sea.*

14 (3) *Eliminate air quality impacts from restoration projects using*  
15 *the best available technology, as determined by the South Coast*  
16 *Air Quality Management District and the Imperial County Air*  
17 *Pollution Control District.*

18 (4) *Protect water quality.*

19 (5) *Maintain the Salton Sea as a vital link along the Pacific*  
20 *Flyway.*

21 (6) *Preserve local tribal heritage and cultural values associated*  
22 *with the Salton Sea.*

23 (7) *Minimize noxious odors and other water and air quality*  
24 *problems.*

25 2941. *Unless the context requires otherwise, the definitions*  
26 *set forth in this section govern the construction of this article.*

27 (a) *“Agency” means the Natural Resources Agency.*

28 (b) *“Habitat mosaics” means two or more proximate habitat*  
29 *types, such as saltwater shoreline abutting riverine deltas and*  
30 *irrigated farmland.*

31 (c) *“Salton Sea Authority” means the joint powers authority*  
32 *comprised of the County of Imperial, the County of Riverside, the*  
33 *Imperial Irrigation District, the Coachella Valley Water District,*  
34 *and the Torres Martinez Desert Cahuilla Indian Tribe.*

35 (d) *“Secretary” means the Secretary of the Natural Resources*  
36 *Agency.*

37 2942. (a) *The Salton Sea Authority shall lead the Salton Sea*  
38 *restoration efforts. Restoration efforts pursuant to this article shall*  
39 *include all of the following:*

40 (1) *Early start habitat demonstration projects.*

- 1     (2) *Biological investigations relating to the restoration of the*
- 2     *Salton Sea.*
- 3     (3) *Investigations of water quality, sedimentation, and inflows*
- 4     *relating to the restoration of the Salton Sea.*
- 5     (4) *Air quality investigations relating to the restoration of the*
- 6     *Salton Sea.*
- 7     (5) *Geotechnical investigations relating to the restoration of*
- 8     *the Salton Sea.*
- 9     (6) *Investigations of access and utility agreements relating to*
- 10    *the restoration of the Salton Sea.*
- 11    (b) (1) *The Salton Sea Authority shall develop a restoration*
- 12    *plan to address the current and future conditions of the Salton*
- 13    *Sea. In developing the restoration plan, the Salton Sea Authority*
- 14    *shall consider the impacts of the restoration plan on air quality,*
- 15    *fish and wildlife habitat, water quality, and the technical and*
- 16    *financial feasibility of the restoration plan.*
- 17    (2) *For the purpose of developing a restoration plan pursuant*
- 18    *to this section, the Salton Sea Authority shall evaluate the Salton*
- 19    *Sea restoration plans, including, but not limited to, the alternatives*
- 20    *described in Chapter 3 of Volume I of the Salton Sea Restoration*
- 21    *Program Draft Programmatic Environmental Impact Report, dated*
- 22    *October 2006, and the program components of those alternatives.*
- 23    (3) (A) *The Salton Sea Authority shall report to the Governor*
- 24    *and the Legislature by June 30, 2014, with a recommended Salton*
- 25    *Sea restoration plan.*
- 26    (B) *A report required to be submitted pursuant to this paragraph*
- 27    *shall be submitted in compliance with Section 9795 of the*
- 28    *Government Code.*
- 29    (c) *In conducting its duties pursuant to this section, the Salton*
- 30    *Sea Authority shall do both of the following:*
- 31    (1) *Act consistent with the purposes of the Salton Sea*
- 32    *Restoration Fund specified in Section 2932.*
- 33    (2) *Work collaboratively with the agency, the Department of*
- 34    *Water Resources, and interested parties.*
- 35    2943. (a) *The Salton Sea Authority shall provide ongoing,*
- 36    *publicly derived input to the secretary relating to the Salton Sea*
- 37    *Authority's responsibilities under this article, including habitat*
- 38    *objectives and actions, types and levels of public access, and*
- 39    *integration of air quality management and habitat restoration.*

- 1     ***(b) The Salton Sea Authority shall assist the secretary to gain***  
2 ***a broader understanding of public and interest group perspectives.***
- 3     ***(c) The Salton Sea Authority shall provide focused review and***  
4 ***discussion, and shall seek to achieve consensus on significant***  
5 ***matters, including the following:***
- 6         ***(1) Discussion and general agreement on design opportunities***  
7 ***and constraints, and integration of the habitat, public access, and***  
8 ***air quality management objectives.***
- 9         ***(2) Public access and recreational components.***
- 10        ***(3) Opportunities for economic development.***
- 11        ***(4) Habitat mosaics and location.***
- 12        ***(5) Vector management and predator control.***
- 13     ***2944. (a) The Department of Fish and Game and the***  
14 ***Department of Water Resources shall provide the staff services,***  
15 ***using staff currently dedicated to Salton Sea activities or other***  
16 ***staff provided by legislative action, that the Salton Sea Authority***  
17 ***requires to carry out the assigned functions, including, but not***  
18 ***limited to, all of the following:***
- 19         ***(1) Administering grants and expenditures from the Salton Sea***  
20 ***Restoration Fund or other sources, including, but not limited to,***  
21 ***block grants from other state boards, commissions, or departments.***
- 22         ***(2) Administering contracts.***
- 23         ***(3) Arranging meetings, agendas, and other administrative***  
24 ***functions.***
- 25         ***(4) Communication and public outreach, including all of the***  
26 ***following:***
- 27             ***(A) Public meetings with interested parties, presentations, and***  
28 ***workshops.***
- 29             ***(B) A regularly updated project-specific Internet Web site.***
- 30             ***(C) E-mail and paper newsletters in English and Spanish.***
- 31         ***(5) Evaluation and implementation of restoration alternatives***  
32 ***necessary for the Salton Sea Authority to fulfill its duties pursuant***  
33 ***to Section 2942.***
- 34     ***(b) The Director of Fish and Game and the Director of Water***  
35 ***Resources shall enter into interagency agreements with other state***  
36 ***agencies to provide the staff services, using staff dedicated to***  
37 ***Salton Sea activities or other staff provided by legislative action,***  
38 ***to carry out the functions of the Salton Sea Authority.***
- 39     ***(c) (1) Only funds deposited in the Salton Sea Restoration Fund***  
40 ***or nonstate funds may be expended to carry out this article.***

1 (2) *The status of the Salton Sea Restoration Fund shall be*  
2 *included in the Governor’s proposed annual budget document,*  
3 *including an accounting of funds expended and committed and the*  
4 *activities and staff associated with those expenditures.*

5 2945. (a) *Nothing in this article interferes with or prevents*  
6 *the exercise of authority by a public agency to carry out its*  
7 *programs, projects, or responsibilities.*

8 (b) *Nothing in this article affects requirements imposed under*  
9 *any other provision of law.*

10 SEC. 3. *If the Commission on State Mandates determines that*  
11 *this act contains costs mandated by the state, reimbursement to*  
12 *local agencies and school districts for those costs shall be made*  
13 *pursuant to Part 7 (commencing with Section 17500) of Division*  
14 *4 of Title 2 of the Government Code.*

15 SECTION 1. ~~Section 71100 of the Public Resources Code is~~  
16 ~~amended to read:~~

17 71100. ~~The following definitions govern the construction of~~  
18 ~~this part:~~

19 (a) ~~“Agency” means the California Environmental Protection~~  
20 ~~Agency.~~

21 (b) ~~“Cal BECC” means the California Border Environmental~~  
22 ~~Cooperation Committee established on July 22, 1994, by the~~  
23 ~~Governors of California, Baja California, and Baja California Sur.~~

24 (c) ~~“California-Baja California border region” means the region~~  
25 ~~described in Chapter IV of the US-Mexico Border XXI Program,~~  
26 ~~Framework Document, published October 1996.~~

27 (d) ~~“City” means the City of Calexico, California.~~

28 (e) ~~“Council” means the California-Mexico Border Relations~~  
29 ~~Council established pursuant to Section 8711 of the Government~~  
30 ~~Code.~~

31 (f) ~~“County” means the County of Imperial, California.~~

32 (g) ~~“Fund” means the California Border Environmental~~  
33 ~~Education Fund established pursuant to Section 71101.~~

34 (h) ~~“IBWC” means the International Boundary and Water~~  
35 ~~Commission, United States Section.~~

36 (i) ~~“New River Improvement Project” or “project” means a~~  
37 ~~project to study, monitor, remediate, and enhance New River water~~  
38 ~~quality in the County of Imperial to protect human health, and~~  
39 ~~develop a river parkway suitable for public use and enjoyment.~~

1 (j) ~~“New River Water Quality, Public Health, and River Parkway~~  
2 ~~Development Program” or “program” means a cooperative and~~  
3 ~~integrated program in the County of Imperial established pursuant~~  
4 ~~to Section 71103.6.~~

5 ~~SEC. 2. Section 71103.5 of the Public Resources Code is~~  
6 ~~amended to read:~~

7 ~~71103.5. (a) The Legislature finds and declares all of the~~  
8 ~~following:~~

9 ~~(1) The New River poses an imminent and severe threat to the~~  
10 ~~public health of residents of Calexico, California, and adjacent~~  
11 ~~communities in the County of Imperial. Since the 1940s, the New~~  
12 ~~River has been recognized as a significant pollution and human~~  
13 ~~health problem, primarily because of extremely high concentrations~~  
14 ~~of fecal coliform bacteria.~~

15 ~~(2) While there have been recent measurable water quality~~  
16 ~~improvements as a result of sewage infrastructure projects~~  
17 ~~implemented and completed during the last 10 years in Mexicali,~~  
18 ~~Mexico, the residual and projected pollution in the New River~~  
19 ~~coming from Mexico remains a significant threat to public health~~  
20 ~~and the environment.~~

21 ~~(3) Current bacteria levels in the New River are several orders~~  
22 ~~of magnitude above the state standards for bacteria. Based on these~~  
23 ~~levels and the historic levels of pollution, the waterway is believed~~  
24 ~~to carry pathogens that cause tuberculosis, encephalitis, polio,~~  
25 ~~cholera, hepatitis, and typhoid. The waterway also carries other~~  
26 ~~contaminants in concentrations that are in violation of federal,~~  
27 ~~state, and Mexican water quality standards by several hundredfold.~~

28 ~~(4) The New River is listed as an impaired river by the United~~  
29 ~~States Environmental Protection Agency due to low dissolved~~  
30 ~~oxygen (DO) and the presence of chlordane, chlorpyrifos, copper,~~  
31 ~~dichloro-diphenyl-trichloroethane (DDT), diazinon, dieldrin,~~  
32 ~~mercury, nutrients, pathogens, polychlorinated biphenyls (PCBs),~~  
33 ~~sediment, selenium, toxaphene, toxicity, trash, and volatile organic~~  
34 ~~compounds (VOCs).~~

35 ~~(5) The New River is a major contributor of pollution to the~~  
36 ~~Salton Sea, and failure to address water quality problems in the~~  
37 ~~New River are impeding the ability of the state to implement laws~~  
38 ~~and programs designed to restore and protect this important~~  
39 ~~environmental and wildlife habitat resource.~~

1     ~~(6) The New River condition in the border area is also an~~  
2 ~~aesthetic nuisance for Calexico residents and has historically~~  
3 ~~inhibited the city’s socioeconomic well-being and growth.~~

4     ~~(7) A coordinated and comprehensive state strategy is needed~~  
5 ~~to deal with the residual and projected pollution so that the New~~  
6 ~~River and associated river channel can be enhanced to a condition~~  
7 ~~that will allow the residents of Calexico and Imperial County to~~  
8 ~~utilize them as recreational and natural assets as contemplated in~~  
9 ~~the California River Parkways Act of 2004 (Chapter 3.8~~  
10 ~~(commencing with Section 5750) of Division 5).~~

11     ~~(8) In the Budget Act of 2009, as amended by Chapter 1 of the~~  
12 ~~Statutes of 2009 Fourth Extraordinary Session, eight hundred~~  
13 ~~thousand dollars (\$800,000) was appropriated to the City of~~  
14 ~~Calexico for various planning needs necessary to develop a river~~  
15 ~~parkway plan and river improvement project for the New River.~~  
16 ~~The moneys were appropriated in order to secure and serve as~~  
17 ~~matching funds for the four million dollars (\$4,000,000) allocated~~  
18 ~~pursuant to the Safe, Accountable, Flexible, Efficient~~  
19 ~~Transportation Equity Act: A Legacy for Users (Public Law~~  
20 ~~109-59) to the City of Calexico for the development of bicycle~~  
21 ~~paths and public park space adjacent to the New River.~~

22     ~~(9) The City of Calexico, as the recipient of funding pursuant~~  
23 ~~to the California River Parkways Act of 2004, has agreed to provide~~  
24 ~~necessary financial support to the council for the development of~~  
25 ~~the council’s strategic plan.~~

26     ~~(b) Pursuant to the authority granted to the council under Section~~  
27 ~~8712 of the Government Code and contingent upon the execution~~  
28 ~~of an agreement with the City of Calexico for the purpose of~~  
29 ~~providing the necessary funding, the council shall develop a~~  
30 ~~strategic plan to guide the implementation of the New River~~  
31 ~~Improvement Project. The strategic plan shall include, but need~~  
32 ~~not be limited to, all of the following elements:~~

33     ~~(1) Quantification of current and projected New River water~~  
34 ~~quality impairments and their threat to public health.~~

35     ~~(2) Prioritization of the actions necessary to protect public health~~  
36 ~~and to meet New River water quality objectives and other~~  
37 ~~environmental goals, such as improving the quality of waterflows~~  
38 ~~into the Salton Sea.~~

39     ~~(3) Identification of potential funds for the implementation of~~  
40 ~~the project, and potential lead agencies that would be responsible~~

1 for environmental review of activities related to the cleanup and  
2 restoration of the New River.

3 (4) Identification of the appropriate federal, state, and local  
4 agencies with a role in implementing and achieving the New River  
5 Improvement Project.

6 (e) (1) To the extent permitted by law, the council may work  
7 with appropriate binational, federal, state, local, and  
8 nongovernmental organizations on both sides of the  
9 California-Mexico border to develop the strategic plan and to fund  
10 and establish cooperative water quality monitoring, public health  
11 studies, inspection, and technical assistance programs as needed  
12 to support, convene, and oversee the project.

13 (2) To further the objectives of this subdivision, the council  
14 may convene and oversee a technical advisory committee. The  
15 advisory committee shall advise the council regarding the necessary  
16 studies and activities to carry out the project, and shall serve at the  
17 pleasure of the council. The advisory committee shall include  
18 representatives from the following:

- 19 (A) Impacted cities and counties.
- 20 (B) Relevant local, regional, and state agencies and departments.
- 21 (C) Nongovernmental organizations.
- 22 (D) Other stakeholders deemed necessary by the council.

23 (3) The council shall appoint the chair of the committee and  
24 may expand the membership and expertise of the committee as it  
25 deems necessary.

26 (4) The council may enter into an agreement, including an  
27 interagency agreement and memorandum of understanding, with  
28 public agencies, including the city, to accept, manage, and expend  
29 funds for the implementation of this section.

30 (d) This section does not modify existing roles, responsibilities,  
31 or liabilities of the State of California, the City of Calexico, the  
32 County of Imperial, or any other governmental agency, under those  
33 laws that regulate, protect, and clean up surface waters entering  
34 the United States from Mexico.

35 (e) The New River Improvement Project Account is hereby  
36 created in the California Border Environmental and Public Health  
37 Protection Fund to receive moneys for activities related to the New  
38 River Improvement Project from sources identified in Section  
39 71101 and other sources. Upon appropriation by the Legislature,  
40 moneys in the account shall be expended to implement the purposes

1 identified in subdivision (c) or Section 71102 that are related to  
2 the New River.

3 SEC. 3. Section 71103.6 is added to the Public Resources Code,  
4 to read:

5 71103.6. (a) The council shall establish the New River Water  
6 Quality, Public Health, and River Parkway Development Program  
7 to coordinate the funding for and implementation of the  
8 recommendations from the strategic plan developed pursuant to  
9 subdivision (c) of Section 71103.5, and the programs and projects  
10 identified by the council pursuant to Section 71102.

11 (b) State agencies that fund the activities of the New River  
12 Improvement Project shall make all necessary efforts to integrate  
13 and align their contractual and administrative requirements for  
14 grants, loans, contracts, and other forms of financial support to  
15 meet the goal of the program.