

ASSEMBLY BILL

No. 147

Introduced by Assembly Member V. Manuel Pérez

January 18, 2013

An act add to Article 3 (commencing with Section 2950) to Chapter 13 of Division 3 of the Fish and Game Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as introduced, V. Manuel Pérez. Environment: Salton Sea: dust mitigation.

Existing law establishes the Salton Sea Restoration Fund that is administered by the Director of Fish and Game and, upon appropriation by the Legislature, used for the restoration of the Salton Sea.

Existing law implements the Quantification Settlement Agreement (QSA), which was entered into by various parties to budget their portions of California's apportionment of Colorado River water and to provide a framework for conservation measures and water transfers for a period of up to 75 years. Existing law provides for a framework to mitigate the environmental impacts on the Salton Sea caused by the QSA water transfer.

This bill would require the Secretary of the Natural Resources Agency, upon the execution of an agreement with specified air quality management districts, to develop, in consultation with the State Air Resources Board and the Salton Sea Authority, a strategic plan, containing specified elements, to guide the implementation of a project to monitor and mitigate dust pollution created at the Salton Sea as a result of the implementation of the QSA.

This bill would establish the Salton Sea Dust Mitigation Project Account in the Salton Sea Restoration Fund for the purposes of receiving

moneys to fund the implementation of the project, and, upon appropriation by the Legislature, moneys in the account would be used to mitigate dust pollution arising from the implementation of the QSA.

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. Article 3 (commencing with Section 2950) is
2 added to Chapter 13 of Division 3 of the Fish and Game Code, to
3 read:

4
5 Article 3. Dust Mitigation
6

7 2950. The Legislature finds and declares all of the following:

8 (a) The Salton Sea is California’s largest lake, covering 365
9 square miles, and it serves as an important stop on the annual
10 Pacific Flyway migratory route, supporting over 400 species of
11 birds and representing over two-thirds of all birds in the continental
12 United States.

13 (b) The Salton Sea is located in the Imperial Valley and
14 Coachella Valley of southern California, and rests in close
15 proximity to over 400,000 residents.

16 (c) In 2003, the Legislature enacted legislation implementing
17 the Quantification Settlement Agreement (QSA), a water transfer
18 agreement between the Imperial Irrigation District and the San
19 Diego Metropolitan Water District, that represented the largest
20 agriculture-to-urban water transfer in the history of the United
21 States.

22 (d) According to an analysis by the Pacific Institute, by 2018,
23 reduced water inflows to the sea will reduce the sea’s depth by
24 five feet, resulting in the exposure of 26.5 square miles of currently
25 submerged lake bed. By 2037, the sea’s depth will drop by up to
26 27 feet, resulting in the exposure of 134 square miles of lake bed.

27 (e) From 1913 to 1924, inclusive, a similar rural-to-urban water
28 transfer occurred when the Los Angeles Department of Water and
29 Power (LADWP) began exporting water from Owens Lake to Los
30 Angeles. After only 11 years, LADWP had successfully drained
31 all but a fraction of Owens Lake, exposing over 100 square miles
32 of lake bed.

1 (f) For decades, the winds blowing across the exposed lake bed
2 of Owens Lake eroded fine-grained sediments and salts, lofting
3 them into the air, creating the single largest source of fugitive dust
4 in the United States.

5 (g) In 1987, the United States Environmental Protection Agency
6 classified the southern Owens Valley as being in violation of
7 National Ambient Air Quality Standards (NAAQS) for particulate
8 matter less than 10 microns in diameter (PM10) and, in 1993,
9 reclassified the region as a “serious non-attainment” area for PM10
10 standards.

11 (h) After years of continued noncompliance with the PM10
12 standards, the United States Environmental Protection Agency
13 ordered California to produce a plan for achieving compliance in
14 the Owens Valley.

15 (i) In 1997, the Great Basin Air Pollution Control District, which
16 has oversight of the Owens Valley, exercised its authority under
17 Section 42316 of the Health and Safety Code to require the
18 LADWP to undertake reasonable measures to mitigate the air
19 quality problems caused by the draining of Owens Lake, which
20 was adopted as part of the 1998 State Implementation Plan.

21 (j) Since 1998, LADWP has spent one billion two hundred
22 million dollars (\$1,200,000,000) to stem dust pollution in Owens
23 Valley mainly by flooding a 40-square-mile area of exposed lake
24 bed at a cost of 30 billion gallons of water a year.

25 (k) In 2012, the State Air Resources Board upheld an additional
26 order by the Great Basin Air District that required LADWP to
27 flood an additional three square miles of exposed lake bed at an
28 estimated cost of four hundred million dollars (\$400,000,000).
29 LADWP has appealed the state’s order in federal court.

30 (l) Under the QSA, the state agreed to cover the cost of
31 mitigating the effects of the water transfer on the Salton Sea beyond
32 the first one hundred thirty-three million dollars (\$133,000,000)
33 in costs.

34 (m) The Third District Court of Appeal, in *In Re Quantification*
35 *Settlement Agreement Cases* (2011) 201 Cal.App.4th 758 (QSA
36 decision), ruled that while the state was liable for covering
37 mitigation costs above the first one hundred thirty-three million
38 dollars (\$133,000,000), it was entirely up to the Legislature to
39 appropriate the money to pay for those costs pursuant to Article
40 16 of Section 7 of the California Constitution.

1 (n) Given that LADWP will likely spend up to one billion six
2 hundred million dollars (\$1,600,000,000) to mitigate dust pollution
3 resulting from its draining of Owens Lake, and the likelihood that
4 mitigating dust pollution created by the Salton Sea will be
5 substantially more expensive because up to 135 square miles of
6 lake bed will be exposed as compared to only 100 square miles at
7 Owens Lake, and the uncertainty of whether the state can be held
8 liable for covering mitigation costs given the QSA decision, it is
9 the intent of the Legislature in enacting this part to develop a
10 strategic plan for dealing with air pollution resulting from the QSA,
11 including quantifying the extent of dust pollution, cataloging the
12 chemicals likely to be present in the dust pollution including
13 dichlorodiphenyltrichloroethan or “DDT” from decades of
14 agricultural runoff draining in the sea, and identifying additional
15 funding mechanisms to pay for mitigation costs, including
16 harvesting the renewable energy generating potential of the Salton
17 Sea.

18 2951. Unless the context requires otherwise, as used in this
19 part, the following terms mean the following:

20 (a) “Authority” means the Salton Sea Authority, a joint powers
21 authority comprised of the County of Imperial, the County of
22 Riverside, the Imperial Irrigation District, the Coachella Valley
23 Water District, and the Torres Martinez Desert Cahuilla Indian
24 Tribe.

25 (b) “County” means either of the following:

26 (1) The County of Riverside.

27 (2) The County of Imperial.

28 (c) “Quantification Settlement Agreement” has the same
29 meaning as defined in subdivision (a) of Section 1 of Chapter 617
30 of the Statutes of 2002.

31 (d) “Salton Sea Dust Mitigation Project” or “project” means a
32 project to monitor and mitigate dust pollution created at the Salton
33 Sea as a result of the Quantification Settlement Agreement.

34 (e) “Secretary” means the Secretary of Natural Resources
35 Agency.

36 (f) “State board” means the State Air Resources Board.

37 (g) “Valley” means either of the following:

38 (1) The Imperial Valley.

39 (2) The Coachella Valley.

1 2952. (a) Upon the execution of an agreement with the Imperial
2 Air Quality Management District and the South Coast Air Quality
3 Management District, and for purposes of providing the necessary
4 funding, the secretary, in consultation and coordination with the
5 state board and the authority, shall develop a strategic plan to guide
6 the implementation of the Salton Sea Dust Mitigation Project. The
7 strategic plan shall include, but is not limited to, all of the following
8 elements:

9 (1) Quantification of current and projected exposed sea lake
10 bed arising from the Quantification Settlement Agreement.

11 (2) Quantification of current and projected exposed sea lake
12 bed arising from factors other than the Quantification Settlement
13 Agreement.

14 (3) Profile of Salton Sea lake bed aerosols, given chemicals that
15 have historically drained into the sea from both agricultural runoff
16 and water coming from Mexico over the New River, including
17 Dichlorodiphenyltrichloroethan or “DDT.”

18 (4) Prioritization of mitigation measures that can be instituted
19 at the sea to enable both valleys to meet National Ambient Air
20 Quality Standards for particulate matter.

21 (5) Identification and prioritization of funding streams that can
22 be accessed or developed for purposes of paying for dust mitigation
23 measures at the sea, including an analysis of how to best monetize
24 the renewable energy generating potential of the Salton Sea.

25 (b) To the extent permitted by law, the secretary, in consultation
26 and coordination with the state board and the authority, may work
27 with appropriate binational, federal, state, local, and
28 nongovernmental organizations on both sides of the
29 California-Mexico border to develop the strategic plan.

30 (c) (1) To further the objectives of this part, the secretary, in
31 consultation and coordination with the state board and the authority,
32 may convene and oversee a technical advisory committee. The
33 advisory committee shall advise the council regarding the necessary
34 studies and activities to carry out the project, and shall serve at the
35 pleasure of the council. The advisory committee shall include
36 representatives from the following:

37 (A) Impacted cities and counties.

38 (B) Relevant local, regional, and state agencies and departments.

39 (C) Nongovernmental organizations.

1 (D) Other stakeholders deemed necessary by the secretary, in
2 consultation and coordination with the state board and the authority.
3 (2) The secretary, in consultation and coordination with the state
4 board and the authority, shall appoint the chair of the committee
5 and may expand the membership and expertise of the committee
6 as it deems necessary.
7 (d) The secretary, in consultation and coordination with the state
8 board and the authority, may enter into an agreement, including
9 an interagency agreement and memorandum of understanding,
10 with public agencies, including the county, to accept, manage, and
11 expend funds for the implementation of this section.
12 (e) This section does not modify existing roles, responsibilities,
13 or liabilities of the State of California, the County of Imperial, the
14 County of Riverside, or any other governmental agency, under the
15 Quantification Settlement Agreement.
16 (f) The Salton Sea Dust Mitigation Project Account is hereby
17 created in the Salton Sea Restoration Fund to receive moneys for
18 activities related to the Salton Sea Dust Mitigation Project from
19 sources identified in paragraph (5) of subdivision (a) and other
20 sources. Upon appropriation by the Legislature, moneys in the
21 account shall be expended to mitigate dust pollution arising from
22 the implementation of the Quantification Settlement Agreement.