

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member V. Manuel Pérez
(Principal coauthor: Senator Hueso)

January 18, 2013

An act add to Article 3 (commencing with Section ~~2950~~ 2951) to Chapter 13 of Division 3 of the Fish and Game Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, 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. (a) *The Legislature finds and declares all of the*
 2 *following:*
 3 (1) *The Salton Sea is California’s largest lake, covering 365*
 4 *square miles, and it serves as an important stop on the annual*
 5 *Pacific Flyway migratory route, supporting over 400 species of*
 6 *birds and representing over two-thirds of all birds in the*
 7 *continental United States.*
 8 (2) *The Salton Sea is located in the Imperial Valley and*
 9 *Coachella Valley of southern California and rests in close*
 10 *proximity to thousands of residents.*
 11 (3) *In 2003, the Legislature enacted statutes (Chapters 611,*
 12 *612, and 613 of the Statutes of 2003) to facilitate the execution*
 13 *and implementation of the Quantification Settlement Agreement*
 14 *(QSA) and related agreements, including a transfer of conserved*
 15 *water from the Imperial Irrigation District to the San Diego Water*
 16 *Authority. As part of those statutes, the Legislature declared its*
 17 *intent that the State of California undertake the restoration of the*
 18 *Salton Sea ecosystem and the permanent protection of wildlife*
 19 *dependent on the ecosystem.*
 20 (4) *Implementation of the water transfer from the Imperial*
 21 *Irrigation District to the San Diego Water Authority will reduce*
 22 *agricultural drainage inflow to the Salton Sea, reducing the sea’s*
 23 *depth and result in the exposure of currently submerged sea*
 24 *lakebed.*
 25 (5) *The exposure of previously submerged sea lakebed has the*
 26 *potential to significantly increase fugitive dust emissions for*
 27 *particulate matter of 10 or less microns in diameter (PM10) as*

1 winds blow across exposed lakebed eroded fine-grained sediments
2 and salts, lofting them into the air.

3 (6) At Owens Lake, a lake drained by the Los Angeles
4 Department of Water and Power, the cost of mitigation fugitive
5 dust emissions arising from the exposed lakebed has reached
6 \$1,200,000,000.

7 (b) It is the intent of the Legislature to develop a strategic plan
8 for dealing with air pollution resulting from the QSA, including
9 quantifying the extent of dust pollution, cataloging the chemicals
10 likely to be present in the dust pollution, including
11 dichlorodiphenyltrichloroethan from decades of agricultural runoff
12 draining into the Salton Sea, and identifying additional funding
13 mechanisms to pay for mitigation costs, including, but not limited
14 to, harvesting the renewable energy generating potential of the
15 Salton Sea.

16 SECTION 4.

17 SEC. 2. Article 3 (commencing with Section 2950) 2951) is
18 added to Chapter 13 of Division 3 of the Fish and Game Code, to
19 read:

20
21 Article 3. Dust Mitigation
22

23 ~~2950. The Legislature finds and declares all of the following:~~

24 ~~(a) The Salton Sea is California's largest lake, covering 365~~
25 ~~square miles, and it serves as an important stop on the annual~~
26 ~~Pacific Flyway migratory route, supporting over 400 species of~~
27 ~~birds and representing over two-thirds of all birds in the continental~~
28 ~~United States.~~

29 ~~(b) The Salton Sea is located in the Imperial Valley and~~
30 ~~Coachella Valley of southern California, and rests in close~~
31 ~~proximity to over 400,000 residents.~~

32 ~~(c) In 2003, the Legislature enacted legislation implementing~~
33 ~~the Quantification Settlement Agreement (QSA), a water transfer~~
34 ~~agreement between the Imperial Irrigation District and the San~~
35 ~~Diego Metropolitan Water District, that represented the largest~~
36 ~~agriculture-to-urban water transfer in the history of the United~~
37 ~~States.~~

38 ~~(d) According to an analysis by the Pacific Institute, by 2018,~~
39 ~~reduced water inflows to the sea will reduce the sea's depth by~~
40 ~~five feet, resulting in the exposure of 26.5 square miles of currently~~

1 submerged lake bed. By 2037, the sea's depth will drop by up to
2 27 feet, resulting in the exposure of 134 square miles of lake bed.

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

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

13 (g) In 1987, the United States Environmental Protection Agency
14 classified the southern Owens Valley as being in violation of
15 National Ambient Air Quality Standards (NAAQS) for particulate
16 matter less than 10 microns in diameter (PM10) and, in 1993,
17 reclassified the region as a "serious non-attainment" area for PM10
18 standards.

19 (h) After years of continued noncompliance with the PM10
20 standards, the United States Environmental Protection Agency
21 ordered California to produce a plan for achieving compliance in
22 the Owens Valley.

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

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

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

38 (l) Under the QSA, the state agreed to cover the cost of
39 mitigating the effects of the water transfer on the Salton Sea beyond

1 the first one hundred thirty-three million dollars (\$133,000,000)
2 in costs:

3 (m) ~~The Third District Court of Appeal, in In Re Quantification~~
4 ~~Settlement Agreement Cases (2011) 201 Cal.App.4th 758 (QSA~~
5 ~~decision), ruled that while the state was liable for covering~~
6 ~~mitigation costs above the first one hundred thirty-three million~~
7 ~~dollars (\$133,000,000), it was entirely up to the Legislature to~~
8 ~~appropriate the money to pay for those costs pursuant to Article~~
9 ~~16 of Section 7 of the California Constitution:~~

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

27 2951. Unless the context requires otherwise, as used in this
28 part, the following terms mean the following:

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

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

35 (1) The County of Riverside.

36 (2) The County of Imperial.

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

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

4 (e) “Secretary” means the Secretary of Natural Resources
5 Agency.

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

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

8 (1) The Imperial Valley.

9 (2) The Coachella Valley.

10 2952. (a) Upon the execution of an agreement with the Imperial
11 Air Quality Management District and the South Coast Air Quality
12 Management District, and for purposes of providing the necessary
13 funding, the secretary, in consultation and coordination with the
14 state board and the authority, shall develop a strategic plan to guide
15 the implementation of the Salton Sea Dust Mitigation Project. The
16 strategic plan shall include, but is not limited to, all of the following
17 elements:

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

20 (2) Quantification of current and projected exposed sea lake
21 bed arising from factors other than the Quantification Settlement
22 Agreement.

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

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

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

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

39 (c) (1) To further the objectives of this part, the secretary, in
40 consultation and coordination with the state board and the authority,

1 may convene and oversee a technical advisory committee. The
2 advisory committee shall advise the council regarding the necessary
3 studies and activities to carry out the project, and shall serve at the
4 pleasure of the council. The advisory committee shall include
5 representatives from the following:

- 6 (A) Impacted cities and counties.
- 7 (B) Relevant local, regional, and state agencies and departments.
- 8 (C) Nongovernmental organizations.
- 9 (D) Other stakeholders deemed necessary by the secretary, in
10 consultation and coordination with the state board and the authority.

11 (2) The secretary, in consultation and coordination with the state
12 board and the authority, shall appoint the chair of the committee
13 and may expand the membership and expertise of the committee
14 as it deems necessary.

15 (d) The secretary, in consultation and coordination with the state
16 board and the authority, may enter into an agreement, including
17 an interagency agreement and memorandum of understanding,
18 with public agencies, including the county, to accept, manage, and
19 expend funds for the implementation of this section.

20 (e) This section does not modify existing roles, responsibilities,
21 or liabilities of the State of California, the County of Imperial, the
22 County of Riverside, or any other governmental agency, under the
23 Quantification Settlement Agreement.

24 (f) The Salton Sea Dust Mitigation Project Account is hereby
25 created in the Salton Sea Restoration Fund to receive moneys for
26 activities related to the Salton Sea Dust Mitigation Project from
27 sources identified in paragraph (5) of subdivision (a) and other
28 sources. Upon appropriation by the Legislature, moneys in the
29 account shall be expended to mitigate dust pollution arising from
30 the implementation of the Quantification Settlement Agreement.

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