

AMENDED IN ASSEMBLY MAY 14, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1165

Introduced by Assembly Member Yamada

February 27, 2009

An act to amend Section 65007 of the Government Code, and to amend Sections ~~8501~~, 8502, 8559, 8560, 8610.5, and 8709.4 of, to add Sections 8709.5, 8709.6, ~~and 8709.7 to, to repeal Sections 8562 and 8577~~ 8709.7, 12645, 12646, and 12647 to, *to add the heading of Article 2 (commencing with Section 12645) to Chapter 2 of Part 6 of Division 6 of, to repeal Sections 8562 and 8577 of, to repeal the heading of Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of, and to repeal and amend Sections 8522.3, 8522.5, 8523, and 8578 of, the Water Code, relating to flood protection.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, as amended, Yamada. Flood protection.

(1) Existing law prohibits the legislative body of a city or county within the Sacramento-San Joaquin Valley, after the adoption of specified amendments to the applicable general plan or zoning ordinance, from entering into a development agreement for property that is located within a flood hazard zone, unless the legislative body makes one of several possible determinations, one of which is a determination that the local flood management agency has made adequate progress on the construction of a flood protection system. Existing law, after the adoption of those amendments, also conditions the approval of a discretionary entitlement or ministerial permit that

would result in the construction of a new residence for a project that is located within a flood hazard zone, and the approval of a tentative map, or a parcel map as specified, for a subdivision that is located within a flood hazard zone, upon the legislative body making one of several possible determinations, one of which is a determination that the local flood management agency has made adequate progress on the construction of a flood protection system. Existing law defines “adequate progress” to mean, among other things, that the revenues sufficient to fund each year of the project schedule for the flood protection system have been identified, and that at least 90% of the revenues scheduled to have been received in any given year have been appropriated and are being expended.

This bill, for the purpose of those provisions, would authorize the Central Valley Flood Protection Board (board) to find that the local flood management agency is making adequate progress in working toward the completion of the flood protection system for any year in which state funding is not appropriated consistent with an agreement between a state agency and the local flood management agency.

(2) Under existing law, the Department of Water Resources performs various flood management activities throughout the state, and the board engages in flood management activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law establishes the Sacramento and San Joaquin Drainage District under the administration of the board for the purposes of carrying out specified flood management activities within the boundaries of the district. Existing law requires the board, in any evidentiary hearing, to consider various matters, including the effects of a proposed action on the State Plan of Flood Control, as defined.

~~This bill would require the department to prepare and the board to adopt a map that clearly delineates the boundaries of the Sacramento and San Joaquin Drainage District. The board would be required to make the map available to the public at no charge. The bill would revise the definition of the State Plan of Flood Control for these and other purposes.~~

(3) Existing law provides that a majority of the board constitutes a quorum and declares that no board action is effective unless the action is concurred in by a majority of the board members.

This bill, instead, would provide that a majority of the voting members of the board constitutes a quorum and would declare that no board action

is effective unless a quorum is present and the action is concurred in by a majority of those members voting and present.

(4) Under existing law, any meeting of the board, at its office, when all of the members are present, is a legal meeting at which any business may be transacted.

This bill would repeal that provision.

(5) Existing law prohibits a board member or any person or organization with an interest in board decisions, or any person representing a person or organization with an interest in board decisions who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined.

This bill would revise the definition of the term “ex parte communication” to mean any oral or written communication outside of a noticed board meeting concerning specified matters. The bill would prohibit a board member appointed by the Governor from participating in an ex parte communication with any person or organization with an interest in board decisions, or any person representing a person or organization with an interest in board decisions who intends to influence the decision of a board member on a matter before the board.

(6) Existing law requires the board to hold an evidentiary hearing for any matter that requires the issuance of a permit.

This bill would require the board to hold an evidentiary hearing for any matter that requires the issuance of a permit if the proposed work may significantly affect any element of the State Plan of Flood Control or if a formal protest against that permit has been lodged. The bill would authorize the board to, by regulation, define types of encroachments that will not significantly affect any element of the State Plan of Flood Control. The bill would authorize the board to delegate the approval of permits for those encroachments to the executive officer.

(7) Existing law requires the board to make a specified finding regarding the impact of an encroachment on public safety before taking action to modify an encroachment on levees, channels, or other flood control works.

This bill would authorize the board to delegate to the executive officer the authority to take action to remove or modify the encroachment. The bill would authorize the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control

works under the jurisdiction of the board. The board, and the executive officer if delegated that authority, would be granted authority to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that requires a permit from the board without securing a permit or an activity that is inconsistent with a permit issued by the board. The bill would authorize the imposition of civil liability on a person or public agency that undertakes an encroachment or commits other action in violation of specified requirements relating to encroachments to provisions relating to the board.

(8) Existing law provides for state cooperation with the federal government in the construction of specified flood control projects.

This bill, with a certain exception, would provide that specified provisions of law that authorize financial assistance to flood control projects in the Sacramento-San Joaquin Watersheds shall not be construed to expand the liability of the state for the operation and maintenance of any flood management facility that is outside the scope of a designated state plan of flood control.

~~(8)~~

(9) The bill would make various technical corrections.

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. Section 65007 of the Government Code is
2 amended to read:
3 65007. As used in this title, the following terms have the
4 following meanings, unless the context requires otherwise:
5 (a) "Adequate progress" means all of the following:
6 (1) The total project scope, schedule, and cost of the completed
7 flood protection system have been developed to meet the
8 appropriate standard of protection.
9 (2) (A) Revenues that are sufficient to fund each year of the
10 project schedule developed in paragraph (1) have been identified
11 and, in any given year and consistent with that schedule, at least
12 90 percent of the revenues scheduled to ~~have been~~ be received by
13 that year have been appropriated and are currently being expended.
14 (B) Notwithstanding subparagraph (A), for any year in which
15 state funding is not appropriated consistent with an agreement

1 between a state agency and a local flood management agency, the
2 Central Valley Flood Protection Board may find that the local
3 flood management agency is making adequate progress in working
4 toward the completion of the flood protection system.

5 (3) Critical features of the flood protection system are under
6 construction, and each critical feature is progressing as indicated
7 by the actual expenditure of the construction budget funds.

8 (4) The city or county has not been responsible for a significant
9 delay in the completion of the system.

10 (5) The local flood management agency shall provide the
11 Department of Water Resources and the Central Valley Flood
12 Protection Board with the information specified in this subdivision
13 sufficient to determine substantial completion of the required flood
14 protection. The local flood management agency shall annually
15 report to the Central Valley Flood Protection Board on the efforts
16 in working toward completion of the flood protection system.

17 (b) "Central Valley Flood Protection Plan" has the same
18 meaning as that set forth in Section 9612 of the Water Code.

19 (c) "Developed area" has the same meaning as that set forth in
20 Section 59.1 of Title 44 of the Code of Federal Regulations.

21 (d) "Flood hazard zone" means an area subject to flooding that
22 is delineated as either a special hazard area or an area of moderate
23 hazard on an official flood insurance rate map issued by the Federal
24 Emergency Management Agency. The identification of flood
25 hazard zones does not imply that areas outside the flood hazard
26 zones, or uses permitted within flood hazard zones, will be free
27 from flooding or flood damage.

28 (e) "Nonurbanized area" means a developed area or an area
29 outside a developed area in which there are fewer than 10,000
30 residents.

31 (f) "Project levee" means any levee that is part of the facilities
32 of the State Plan of Flood Control.

33 (g) "Sacramento-San Joaquin Valley" means lands in the bed
34 or along or near the banks of the Sacramento River or San Joaquin
35 River, or their tributaries or connected therewith, or upon any land
36 adjacent thereto, or within the overflow basins thereof, or upon
37 land susceptible to overflow therefrom. The Sacramento-San
38 Joaquin Valley does not include lands lying within the Tulare Lake
39 basin, including the Kings River.

(h) “State Plan of Flood Control” has the same meaning as that set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

(i) “Urban area” means a developed area in which there are 10,000 residents or more.

(j) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(k) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources.

~~SEC. 2. Section 8501 of the Water Code is amended to read:~~

~~8501. (a) The boundaries of the district are set forth and described in Chapter 170 of the Statutes of 1913, and the description is hereby incorporated herein by reference as set forth in that chapter.~~

~~(b) The department shall prepare, and the Central Valley Flood Protection Board shall adopt, a map that clearly delineates the boundaries of the district. The board shall make the map available to the public at no charge.~~

~~SEC. 3.~~

~~SEC. 2. Section 8502 of the Water Code is amended to read:~~

~~8502. The management and control of the district are vested in the Central Valley Flood Protection Board.~~

~~SEC. 4.~~

~~SEC. 3. Section 8522.3 of the Water Code, as added by Section 4 of Chapter 365 of the Statutes of 2007, is repealed.~~

~~SEC. 5.~~

~~SEC. 4. Section 8522.3 of the Water Code, as added by Section 8 of Chapter 366 of the Statutes of 2007, is amended to read:~~

~~8522.3. “Facilities of the State Plan of Flood Control” has the same meaning as that set forth in subdivision (e) of Section 5096.805 of the Public Resources Code.~~

~~SEC. 6.~~

~~SEC. 5. Section 8522.5 of the Water Code, as added by Section 5 of Chapter 365 of the Statutes of 2007, is repealed.~~

~~SEC. 7.~~

SEC. 6. Section 8522.5 of the Water Code, as added by Section 9 of Chapter 366 of the Statutes of 2007, is amended to read:

8522.5. "Project levee" has the same meaning as that set forth in subdivision (g) of Section 5096.805 of the Public Resources Code.

~~SEC. 8.~~

SEC. 7. Section 8523 of the Water Code, as added by Section 6 of Chapter 365 of the Statutes of 2007, is repealed.

~~SEC. 9.~~

SEC. 8. Section 8523 of the Water Code, as added by Section 10 of Chapter 366 of the Statutes of 2007, is amended to read:

8523. "State Plan of Flood Control" has the same meaning as that set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

~~SEC. 10.~~

SEC. 9. Section 8559 of the Water Code is amended to read:
8559. A majority of the voting members of the board constitutes a quorum.

~~SEC. 11.~~

SEC. 10. Section 8560 of the Water Code is amended to read:
8560. No action of the board shall be effective unless a quorum is present and the action is concurred in by a majority of those members present and voting.

~~SEC. 12.~~

SEC. 11. Section 8562 of the Water Code is repealed.

~~SEC. 13.~~

SEC. 12. Section 8577 of the Water Code, as added by Section 12 of Chapter 365 of the Statutes of 2007, is repealed.

~~SEC. 14.~~

SEC. 13. Section 8578 of the Water Code, as added by Section 13 of Chapter 365 of the Statutes of 2007, is repealed.

~~SEC. 15.~~

SEC. 14. Section 8578 of the Water Code, as added by Section 17 of Chapter 366 of the Statutes of 2007, is amended to read:

8578. (a) For the purposes of this section, "ex parte communication" means any oral or written communication outside of a noticed board meeting concerning matters, other than purely procedural matters, regarding any of the following:

1 (1) An application that has been submitted to the board and has
2 been determined to be complete by the executive officer.

3 (2) An enforcement action.

4 (3) Any other quasi-judicial matter requiring board action, after
5 the matter has been placed on the board's agenda and notice of the
6 meeting has been provided pursuant to Section 11125 of the
7 Government Code.

8 (b) (1) ~~No~~A board member appointed pursuant to subdivision
9 (b) of Section 8551 shall *not* participate in an ex parte
10 communication with any person or organization with an interest
11 in board decisions, nor any person representing a person or
12 organization with an interest in board decisions, excluding a staff
13 member of the board acting in his or her official capacity, who
14 intends to influence the decision of a board member on a matter
15 before the board.

16 (2) If an ex parte communication occurs, the board member
17 shall notify the interested party that a full disclosure of the ex parte
18 communication shall be entered in the board's record.

19 (3) Communications cease to be ex parte communications when
20 the board member or the person who engaged in the communication
21 with the board member fully discloses the communication and
22 requests in writing that it be placed in the board's official record
23 of the proceeding.

24 (c) Notwithstanding Section 11425.10 of the Government Code,
25 the ex parte communications provisions of the Administrative
26 Procedure Act (Article 7 (commencing with Section 11430.10) of
27 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
28 Code) do not apply to proceedings of the board to which this
29 section applies.

30 ~~SEC. 16.~~

31 *SEC. 15.* Section 8610.5 of the Water Code is amended to read:

32 8610.5. (a) (1) The board shall adopt regulations relating to
33 evidentiary hearings pursuant to Chapter 4.5 (commencing with
34 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
35 Code.

36 (2) The board shall hold an evidentiary hearing for any matter
37 that requires the issuance of a permit if the proposed work may
38 significantly affect any element of the State Plan of Flood Control
39 or if a formal protest against that permit has been lodged.

1 (3) The board may, by regulation, define types of encroachments
2 that will not significantly affect any element of the State Plan of
3 Flood Control. Evidentiary hearings are not required for
4 uncontested applications for those defined encroachments unless,
5 in the judgment of the executive officer, there is a reasonable
6 possibility that the project will have a significant effect on an
7 adopted plan of flood control.

8 (4) The board may delegate approval of permits for
9 encroachments that will not significantly affect any element of the
10 State Plan of Flood Control to the executive officer.

11 (5) The board is not required to hold an evidentiary hearing
12 before making a decision relating to general flood protection policy
13 or planning.

14 (b) The board may take an action pursuant to Section 8560 only
15 after allowing for public comment.

16 (c) The board shall, in any evidentiary hearing, consider all of
17 the following, as applicable, for the purpose of taking any action
18 pursuant to Section 8560:

19 (1) Evidence that the board admits into its record from any party,
20 state or local public agency, or nongovernmental organization with
21 expertise in flood or flood plain management.

22 (2) The best available science that relates to the scientific issues
23 presented by the executive officer, legal counsel, the department,
24 or other parties that raise credible scientific issues.

25 (3) Effects of the proposed decision on the entire State Plan of
26 Flood Control.

27 (4) Effects of reasonably projected future events, including, but
28 not limited to, changes in hydrology, climate, and development
29 within the applicable watershed.

30 ~~SEC. 17.~~

31 *SEC. 16.* Section 8709.4 of the Water Code is amended to read:

32 8709.4. (a) Before taking action to remove or modify an
33 encroachment on levees, channels, and other flood control works
34 pursuant to powers granted by this part, a permit, or standards
35 adopted pursuant to this part, the board shall make one of the
36 following findings, based on substantial evidence, regarding the
37 encroachment's impact on public safety:

38 (1) The encroachment presents an imminent threat to the
39 structural integrity of the levee, channel, or other flood control
40 work.

(2) The encroachment significantly impairs the functional capability of the levee, channel, or other flood control work to fulfill its particular intended role in the overall flood control plan.

(b) Routine maintenance that includes the removal or modification of fences, gates, and vegetation on the levee structure and other flood control structures is not subject to subdivision (a).

(c) The board may delegate authority to the executive officer to take action to remove or modify encroachments on levees, channels, and other flood control works in accordance with subdivision (a).

~~SEC. 18.~~

SEC. 17. Section 8709.5 is added to the Water Code, to read:

8709.5. (a) Notwithstanding Section 8709 or 8709.4, if the board, or the executive officer if delegated authority by the board, determines that any person or public agency has undertaken, or is threatening to undertake, any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board, the board or executive officer may issue an order directing that person or public agency to cease and desist. The order may also be issued to enforce any requirement of a permit or any requirement under this part that is subject to the jurisdiction of the board.

(b) The cease and desist order shall be issued only if the person or public agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity. The notice shall include the following:

(1) A description of the activity ~~which~~ *that* meets the criteria of subdivision (a) of Section 8709.4 or a statement that the described activity constitutes an encroachment that is in violation of this article because it is not authorized by a valid permit.

(2) A statement that the described activity shall immediately cease or the alleged violator may receive a cease and desist order, the violation of which may subject the violator to fines or penalties.

(3) The name, address, and telephone number of the staff member who is to be contacted for further information.

(c) The cease and desist order may be subject to terms and conditions as the board or the executive officer may determine are necessary to avoid an unreasonable impact on public safety.

1 (d) The cease and desist order shall be effective upon its
2 issuance, and copies shall be served immediately by certified mail
3 upon the person or agency subject to the order.

4 ~~SEC. 19.~~

5 *SEC. 18.* Section 8709.6 is added to the Water Code, to read:

6 8709.6. (a) If the board, after a public hearing, determines that
7 any person or public agency has undertaken, or is threatening to
8 undertake, any activity that requires a permit from the board
9 without securing a permit or is inconsistent with any permit
10 previously issued by the board, the board may issue an order
11 directing that person or public agency to cease and desist. The
12 board may also issue the order to enforce any requirement of a
13 permit, or any requirement of this part that is subject to the
14 jurisdiction of the board.

15 (b) The cease and desist order may be subject to terms and
16 conditions as the board may determine are necessary to ensure
17 compliance with this part, including immediate removal of any
18 encroachment or the setting of a schedule within which action shall
19 be taken to obtain a permit pursuant to this part.

20 (c) Notice of the public hearing on a proposed cease and desist
21 order shall be given to any affected person and public agency and
22 the order shall be final and effective upon the issuance of the order.
23 Copies shall be served immediately by certified mail upon the
24 person or public agency subject to the order and upon other affected
25 persons and public agencies that appear at the hearing or request
26 a copy.

27 (d) In addition to any other authority to order restoration, the
28 board may, after a public hearing, order restoration of a site if it
29 finds that an encroachment has occurred without a permit from
30 the board.

31 ~~SEC. 20.~~

32 *SEC. 19.* Section 8709.7 is added to the Water Code, to read:

33 8709.7. (a) Any person or public agency that violates any
34 provision of this article may be civilly liable in accordance with
35 this section.

36 (b) (1) Civil liability may be imposed by the superior court in
37 accordance with this article on any person or public agency that
38 performs or undertakes an encroachment that is in violation of this
39 article or that is inconsistent with any permit previously issued by

1 the board in an amount that shall not exceed thirty thousand dollars
2 (\$30,000), but shall not be less than five hundred dollars (\$500).

3 (2) Civil liability may be imposed for any violation of this part
4 other than ~~that a violation~~ specified in paragraph (1) in an amount
5 that shall not exceed thirty thousand dollars (\$30,000).

6 (c) Any person or public agency that performs or undertakes an
7 encroachment that is in violation of this part or in a manner that
8 is inconsistent with any permit previously issued by the board,
9 when the person or public agency intentionally and knowingly
10 performs or undertakes the encroachment in violation of this part
11 or in a manner that is inconsistent with any previously issued
12 permit, may, in addition to any other penalties, be civilly liable in
13 accordance with this subdivision. Civil liability may be imposed
14 by the superior court in accordance with this article for a violation
15 described in this subdivision in an amount that shall not be less
16 than one thousand dollars (\$1,000), nor more than fifteen thousand
17 dollars (\$15,000), per day for each day in which the violation
18 persists.

19 (d) In determining the amount of civil liability, the following
20 factors shall be considered:

21 (1) The nature, circumstance, extent, and gravity of the violation.

22 (2) Whether the violation is susceptible to restoration or other
23 remedial measures.

24 (3) The function of the levee, channel, or other flood control
25 work affected by the violation.

26 (4) The cost to the state of bringing the action.

27 (5) With respect to the violator, any voluntary restoration or
28 remedial measures undertaken, any prior history of violations, the
29 degree of culpability, economic profits, if any, resulting from, or
30 expected to result as a consequence of, the violation, and other
31 matters the board deems relevant.

32 (e) Any person or public agency that intentionally or negligently
33 violates any cease and desist order issued, reissued, or amended
34 by the board, or any restoration order issued, reissued, or amended
35 by the board may be ~~liable civilly~~ *for a civil penalty* in an amount
36 that shall not exceed six thousand dollars (\$6,000) for each day in
37 which that violation persists. Any actual penalty imposed shall be
38 reasonably proportionate to the damage suffered as a consequence
39 of the violation.

(f) This section does not authorize the issuance or enforcement of any cease and desist order as to any activity undertaken by a local public agency pursuant to a declaration of emergency by the governing body of the local public agency or the board of supervisors of the county in which the activity is being or may be undertaken.

SEC. 20. *The heading of Article 2 (commencing with Section 12645) is added to Chapter 2 of Part 6 of Division 6 of the Water Code, to read:*

Article 2. Projects in the Sacramento-San Joaquin Watersheds

SEC. 21. *Section 12645 is added to the Water Code, to read:*

12645. The Legislature finds and declares all of the following:

(a) *In 1911, the Legislature adopted a flood control plan for the Sacramento Valley as proposed by the federal California Debris Commission and created the Reclamation Board to regulate levees and other encroachments. The state's adoption of a valley-wide flood management plan was intended to provide state control over local flood control projects. Six years later, California gained Congressional authorization for the United States Army Corps of Engineers (Corps) to collaborate with the state in building and maintaining the Sacramento River Flood Control Project.*

(b) *The state and federal governments have built or rebuilt levees, weirs, and bypasses to increase conveyance of flood waters downstream. The Sacramento River Flood Control Project and the federal-state flood control project in the San Joaquin Valley include approximately 1,600 miles of levees and other facilities to reduce central valley flood risk, now defined as the State Plan of Flood Control in subdivision (j) of Section 5096.805 of the Public Resources Code. The Corps often constructed the federal "project levees" in both the Sacramento and San Joaquin Basin from already existing private or local levees. The federal government transferred completed portions of the Sacramento River Flood Control Project to the state, as portions were completed, which in turn passed responsibility for operation and maintenance to local reclamation districts.*

(c) *In 2003, a state Court of Appeal in *Paterno v. State of California* (2003) 113 Cal.App.4th 998, highlighted the liability risks the state faces from failed levees. The Paterno court held the*

1 state liable for failure of a levee that was operated and maintained
2 by a local levee maintenance district. In settlement of that
3 litigation, the state's liability was substantial because homes and
4 a shopping center were built behind the levee and suffered from
5 the resulting flood.

6 (d) State law has authorized funding for various flood control
7 projects in the Sacramento-San Joaquin Watersheds. These
8 statutory authorizations included varying provisions regarding
9 responsibility and liability for operation and maintenance of the
10 flood control facilities, and may or may not have incorporated the
11 specified facilities into the federal-state Sacramento River or San
12 Joaquin River flood control projects. After the court ruling in
13 *Paterno*, the status of each flood facility became critically
14 important to determining liability, and legal ambiguities led to
15 questions about whether particular facilities were incorporated
16 into a federal-state flood control project. In some cases, despite
17 a location between two project levees, certain levees remain outside
18 the jurisdiction of a federal-state flood control project, with local
19 agencies retaining liability.

20 (e) In 2006, California voters approved the Disaster
21 Preparedness and Flood Prevention Bond Act of 2006, which
22 authorized the issuance of general obligation bonds in the amount
23 of \$4.9 billion for flood protection and defined the Sacramento
24 River and San Joaquin River federal-state flood control projects
25 as the "State Plan of Flood Control." The following year, the
26 Legislature passed a package of bills to reform state flood
27 protection policy in the central valley. These laws required the
28 Department of Water Resources to develop, and the Central Valley
29 Flood Protection Board to adopt, a Central Valley Flood
30 Protection Plan, which is broader than the State Plan of Flood
31 Control, affecting the entire watersheds of the Sacramento and
32 San Joaquin Valley. These laws addressed state liability for central
33 valley flood control facilities, ensuring that the state's liability
34 was limited to facilities identified in the State Plan of Flood
35 Control. These laws did not specifically address the facilities
36 described in this article.

37 SEC. 22. Section 12646 is added to the Water Code, to read:

38 12646. Unless the context requires otherwise, the definitions
39 set forth in this section govern the construction of this chapter.

40 (a) "Board" means the Central Valley Flood Protection Board.

1 (b) “Plan” means the Central Valley Flood Protection Plan.

2 (c) “Project levee” means any levee that is part of the facilities
3 of the State Plan of Flood Control.

4 (d) “Public safety infrastructure” means public safety
5 infrastructure necessary to respond to a flood emergency,
6 including, but not limited to, street and highway evacuation routes,
7 public utilities necessary for public health and safety, including
8 drinking water and wastewater treatment facilities, and hospitals.

9 (e) “Sacramento-San Joaquin Valley” means any lands in the
10 bed or along or near the banks of the Sacramento River or San
11 Joaquin River, or any of their tributaries or connected therewith,
12 or upon any land adjacent thereto, or within any of the overflow
13 basins thereof, or upon any land susceptible to overflow therefrom.
14 The Sacramento-San Joaquin Valley does not include lands lying
15 within the Tulare Lake basin, including the Kings River.

16 (f) “State Plan of Flood Control” has the meaning set forth in
17 subdivision (j) of Section 5096.805 of the Public Resources Code.

18 SEC. 23. Section 12647 is added to the Water Code, to read:

19 12647. (a) The state shall not have responsibility or liability
20 for the operation and maintenance of central valley flood control
21 facilities identified in this article unless one or more of the
22 following applies:

23 (1) The department identifies the facility as part of the State
24 Plan of Flood Control.

25 (2) The state has expressly accepted the transfer of liability for
26 the facility from the federal government.

27 (3) The board incorporates the facility into the State Plan of
28 Flood Control pursuant to Section 9611.

29 (b) Unless otherwise specifically provided, nothing in this article
30 shall be construed to expand the responsibility of the state for the
31 operation or maintenance of any flood management facility outside
32 the scope of the State Plan of Flood Control, except as specifically
33 determined by the board pursuant to Section 9611.

34 (c) Use of the phrase “adopted and authorized” in this article
35 does not, by itself, reflect incorporation of the specified facility
36 into the State Plan of Flood Control or assumption of liability by
37 the state, unless one of the conditions described in subdivision (a)
38 applies to the facility.

39 (d) Nothing in this section abrogates or modifies any duty,
40 responsibility, or liability of any federal, state, or local agency,

1 *including, but not limited to, those duties, responsibilities, and*
2 *liabilities set forth in Sections 8370, 12642, and 12828.*

3 *SEC. 24. The heading of Article 2 (commencing with Section*
4 *12648) of Chapter 2 of Part 6 of Division 6 of the Water Code is*
5 *repealed.*

6
7 ~~Article 2. Projects in the Sacramento-San Joaquin Watersheds~~
8