

AMENDED IN SENATE MAY 6, 2014
AMENDED IN SENATE APRIL 21, 2014
AMENDED IN SENATE APRIL 8, 2014
AMENDED IN SENATE MARCH 10, 2014

SENATE BILL

No. 936

Introduced by Senator Monning
(Principal coauthor: Senator Cannella)
(Principal coauthors: Assembly Members Alejo and Stone)

February 3, 2014

An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9109 of the Commercial Code, to add Section 6537 to the Government Code, to amend Section 1731 of, to add Section 1770 to, and to add Article 5.7 (commencing with Section 849) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, and to add Article 8 (commencing with Section 685) to Chapter 3 of Part 5 of the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 936, as amended, Monning. Monterey Peninsula Water Management District: financing orders and water rate relief bonds.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations. Existing law authorizes the commission to fix just and reasonable rates and charges. The existing Monterey Peninsula Water Management District Law establishes the Monterey Peninsula Water Management District and provides for its powers and purposes.

This bill would authorize the commission to issue financing orders to facilitate the recovery, financing, or refinancing of water supply costs, defined to mean reasonable and necessary costs incurred or expected to be incurred by a qualifying water utility, as defined, undertaking water supply activities, as specified. The bill would authorize the Monterey Peninsula Water Management District to issue water rate relief bonds if the commission finds that the bonds will provide savings to water customers on the Monterey Peninsula, as specified.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the Monterey Peninsula, the California American Water, and the Monterey Peninsula Water Management District.

(3) Existing law makes any public utility, as defined, and any corporation other than a public utility that violates the Public Utilities Act guilty of a crime.

Because a violation of certain provisions of the bill would be a violation of the act, this bill would impose a state-mandated local program by creating a new crime.

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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Under existing law, the Public Utilities Commission has
4 regulatory authority over public utilities, including water utilities.
5 Existing law authorizes the commission to fix just and reasonable
6 rates and charges.
7 (b) To address the unique needs for integrated water
8 management on the Monterey Peninsula, the Legislature adopted
9 special legislation creating the Monterey Peninsula Water
10 Management District (Monterey Peninsula Water Management

1 District Law, as added by Section 118 of Chapter 527 of the
2 Statutes of 1977, as amended).

3 (c) California American Water (CAW) is the water utility that
4 provides water to most of the residents and businesses within the
5 Monterey Peninsula.

6 (d) CAW provides water to its customers from the surface water
7 in the Carmel River and its tributaries, water in the Carmel Valley
8 Alluvial Aquifer that underlies the Carmel River, and water in the
9 Seaside Groundwater Basin that includes the Northern and
10 Southern Coastal Subunits and the Northern and Southern Inland
11 Subareas.

12 (e) CAW's lawful right to obtain water supplies from the Carmel
13 Valley Alluvial Aquifer was determined by the State Water
14 Resources Control Board (SWRCB) in SWRCB Order No. WR
15 95-10, dated July 6, 1995. The SWRCB found that CAW does not
16 possess the legal right to divert from the Carmel River system the
17 amount of water historically, and presently, being diverted, and
18 required CAW to diligently pursue a substitute water supply.
19 SWRCB Order No. WR 95-10 limited CAW production from the
20 Carmel River system to 10,308 acre-feet annually (Water Year
21 2012), and ordered CAW to terminate its unpermitted diversions
22 from the Carmel River, and in the interim, to maximize its
23 production from the Seaside Groundwater Basin.

24 (f) Subsequently, the SWRCB issued a cease and desist order
25 (CDO) against CAW in October 2009 as Order No. WR 2009-0060.
26 The CDO prescribed a series of significant cutbacks to CAW's
27 production from the Carmel River system from January 2010 to
28 December 2016, inclusive. Pursuant to the CDO, CAW's customers
29 are subject to a moratorium on water permits for new construction
30 and remodels, and may be subject to water rationing, fines, or both
31 if CAW production limits are exceeded.

32 (g) CAW's ability to produce water from the Seaside
33 Groundwater Basin has also been limited by the adjudication of
34 the Monterey County Superior Court. CAW's right to groundwater
35 from Coastal Subareas and the Laguna Seca Subarea of the Seaside
36 Groundwater Basin, without causing adverse effects such as
37 seawater intrusion, declining water levels, or land subsidence,
38 characterized as a "safe yield," was determined in California
39 American Water v. City of Seaside (2010) (183 Cal.App.4th 471).
40 The 2006 final judgment imposes a series of pumping reductions

1 designed to limit production of natural basin water to its safe yield,
2 initially set at 3,000 acre-feet per year. CAW's share of the safe
3 yield is reduced proportionately at each stage.

4 (h) The need for infrastructure to expand CAW sources of water
5 has been heightened by the lack of legal water supplies resulting
6 from the CDO, SWRCB Order No. WR 95-10, the listing of the
7 California red-legged frog and the steelhead trout as threatened
8 species under the federal Endangered Species Act of 1973 (16
9 U.S.C. Sec. 1531 et seq.) and the limitations on water from the
10 Seaside Groundwater Basin adjudication.

11 (i) These circumstances create a special and unique need to
12 augment potable water supplies on the Monterey Peninsula.
13 Potential infrastructure projects necessary to develop new sources
14 of supply to resolve the critical water supply shortage within
15 CAW's Monterey County District include desalination, aquifer
16 storage and recovery projects, and the production and use of
17 recycled water.

18 (j) It may benefit the customers of CAW to finance the capital
19 costs associated with the construction and installation of water
20 infrastructure, plants, and facilities necessary to resolve the critical
21 water supply shortage through an alternative financing mechanism.

22 (k) Alternative financing mechanisms exist that can result in
23 lower costs to customers of CAW as compared to traditional utility
24 financing mechanisms. To use alternative financing mechanisms,
25 the Public Utilities Commission must be empowered to issue
26 financing orders to allow the issuance of bonds secured by water
27 supply property.

28 (l) CAW customers may take advantage of additional costs
29 savings if a public agency assists in the financing of water project
30 capital costs on a tax-exempt basis. It is necessary for California
31 to provide express authority for a public agency to issue bonds or
32 other evidences of indebtedness on this basis.

33 (m) In confirming the Public Utilities Commission's authority
34 to approve water supply property, including a dedicated ~~rate~~
35 ~~component~~ *customer surcharge* to support the issuance of water
36 rate relief bonds, the Legislature is not ratifying or endorsing any
37 particular outcome for proceeding A.12-04-019, but rather is
38 authorizing a means by which the commission may reduce the cost
39 impact on Monterey Peninsula customers if a water supply project
40 *is* approved by the commission in proceeding A.12-04-019.

1 SEC. 2. Section 955.1 of the Civil Code is amended to read:

2 955.1. (a) Except as provided in Sections 954.5 and 955 and
3 subject to subdivisions (b) and (c), a transfer other than one
4 intended to create a security interest pursuant to paragraph (1) or
5 (3) of subdivision (a) of Section 9109 of the Commercial Code,
6 of any payment intangible, as defined in Section 9102 of the
7 Commercial Code, and any transfer of accounts, chattel paper,
8 payment intangibles, or promissory notes excluded from the
9 coverage of Division 9 of the Commercial Code by paragraph (4)
10 of subdivision (d) of Section 9109 of the Commercial Code shall
11 be deemed perfected as against third persons upon there being
12 executed and delivered to the transferee an assignment thereof in
13 writing.

14 (b) As between bona fide assignees of the same right for value
15 without notice, the assignee first giving notice of the right to the
16 obligor in writing has priority.

17 (c) The assignment is not, of itself, notice to the obligor so as
18 to invalidate any payments made by the obligor to the transferor.

19 (d) This section does not apply to transfers or assignments of
20 transition property, as defined in Section 840 of the Public Utilities
21 Code, transfers or assignments of recovery property, as defined in
22 Section 848 of the Public Utilities Code, or transfers or assignments
23 of water supply property, as defined in Section 849 of the Public
24 Utilities Code.

25 SEC. 3. Section 3440.1 of the Civil Code is amended to read:

26 3440.1. This chapter does not apply to any of the following:

27 (a) Things in action.

28 (b) Ships or cargoes if either are at sea or in a foreign port.

29 (c) The sale of accounts, chattel paper, payment intangibles, or
30 promissory notes governed by the Uniform Commercial Code,
31 security interests, and contracts of bottomry or respondentia.

32 (d) Wines or brandies in the wineries, distilleries, or wine cellars
33 of the makers or owners of the wines or brandies, or other persons
34 having possession, care, and control of the wines or brandies, and
35 the pipes, casks, and tanks in which the wines or brandies are
36 contained, if the transfers are made in writing and executed and
37 acknowledged, and if the transfers are recorded in the book of
38 official records in the office of the county recorder of the county
39 in which the wines, brandies, pipes, casks, and tanks are situated.

1 (e) A transfer or assignment made for the benefit of creditors
2 generally or by an assignee acting under an assignment for the
3 benefit of creditors generally.

4 (f) Property exempt from enforcement of a money judgment.

5 (g) Standing timber.

6 (h) Subject to the limitations in Section 3440.3, a transfer of
7 personal property if all of the following conditions are satisfied:

8 (1) Prior to the date of the intended transfer, the transferor or
9 the transferee files a financing statement, with respect to the
10 property transferred, authorized in an authenticated record by the
11 transferor. The financing statement shall be filed in the office of
12 the Secretary of State in accordance with Chapter 5 (commencing
13 with Section 9501) of Division 9 of the Commercial Code, but
14 may use the terms “transferor” in lieu of “debtor” and “transferee”
15 in lieu of “secured party.” The provisions of Chapter 5
16 (commencing with Section 9501) of Division 9 of the Commercial
17 Code shall apply as appropriate to the financing statement.

18 (2) The transferor or the transferee publishes a notice of the
19 intended transfer one time in a newspaper of general circulation
20 published in the judicial district in which the personal property is
21 located, if there is one, and if there is none in the judicial district,
22 then in a newspaper of general circulation in the county embracing
23 the judicial district. The publication shall be completed not less
24 than 10 days before the date the transfer occurs. The notice shall
25 contain the name and address of the transferor and transferee and
26 a general statement of the character of the personal property
27 intended to be transferred, and shall indicate the place where the
28 personal property is located and a date on or after which the transfer
29 is to be made.

30 (i) Personal property not located within this state at the time of
31 the transfer or attachment of the lien if the provisions of this
32 subdivision are not used for the purpose of evading this chapter.

33 (j) A transfer of property that (1) is subject to a statute or treaty
34 of the United States or a statute of this state that provides for the
35 registration of transfers of title or issuance of certificates of title
36 and (2) is so far perfected under that statute or treaty that a bona
37 fide purchaser cannot acquire an interest in the property transferred
38 that is superior to the interest of the transferee.

39 (k) A transfer of personal property in connection with a
40 transaction in which the property is immediately thereafter leased

1 by the transferor from the transferee provided the transferee
2 purchased the property for value and in good faith pursuant to
3 subdivision (c) of Section 10308 of the Commercial Code.

4 (l) Transition property, as defined in Section 840 of the Public
5 Utilities Code, recovery property, as defined in Section 848 of the
6 Public Utilities Code, or water supply property, as defined in
7 Section 849 of the Public Utilities Code.

8 (m) A transfer of property by any governmental entity.

9 SEC. 4. Section 9109 of the Commercial Code is amended to
10 read:

11 9109. (a) Except as otherwise provided in subdivisions (c) and
12 (d), this division applies to each of the following:

13 (1) A transaction, regardless of its form, that creates a security
14 interest in personal property or fixtures by contract.

15 (2) An agricultural lien.

16 (3) A sale of accounts, chattel paper, payment intangibles, or
17 promissory notes.

18 (4) A consignment.

19 (5) A security interest arising under Section 2401 or 2505,
20 subdivision (3) of Section 2711, or subdivision (e) of Section
21 10508, as provided in Section 9110.

22 (6) A security interest arising under Section 4210 or 5118.

23 (b) The application of this division to a security interest in a
24 secured obligation is not affected by the fact that the obligation is
25 itself secured by a transaction or interest to which this division
26 does not apply.

27 (c) This division does not apply to the extent that either of the
28 following conditions is satisfied:

29 (1) A statute, regulation, or treaty of the United States preempts
30 this division.

31 (2) The rights of a transferee beneficiary or nominated person
32 under a letter of credit are independent and superior under Section
33 5114.

34 (d) This division does not apply to any of the following:

35 (1) A landlord's lien, other than an agricultural lien.

36 (2) A lien, other than an agricultural lien, given by statute or
37 other rule of law for services or materials, however Section 9333
38 applies with respect to priority of the lien.

39 (3) An assignment of a claim for wages, salary, or other
40 compensation of an employee.

- 1 (4) A sale of accounts, chattel paper, payment intangibles, or
2 promissory notes as part of a sale of the business out of which they
3 arose.
- 4 (5) An assignment of accounts, chattel paper, payment
5 intangibles, or promissory notes which is for the purpose of
6 collection only.
- 7 (6) An assignment of a right to payment under a contract to an
8 assignee that is also obligated to perform under the contract.
- 9 (7) An assignment of a single account, payment intangible, or
10 promissory note to an assignee in full or partial satisfaction of a
11 preexisting indebtedness.
- 12 (8) A loan made by an insurance company pursuant to the
13 provisions of a policy or contract issued by it and upon the sole
14 security of the policy or contract.
- 15 (9) An assignment of a right represented by a judgment, other
16 than a judgment taken on a right to payment that was collateral.
- 17 (10) A right of recoupment or setoff, provided that both of the
18 following sections apply:
- 19 (A) Section 9340 applies with respect to the effectiveness of
20 rights of recoupment or setoff against deposit accounts.
- 21 (B) Section 9404 applies with respect to defenses or claims of
22 an account debtor.
- 23 (11) The creation or transfer of an interest in or lien on real
24 property, including a lease or rents thereunder, except to the extent
25 that provision is made for each of the following:
- 26 (A) Liens on real property pursuant to Sections 9203 and 9308.
- 27 (B) Fixtures pursuant to Section 9334.
- 28 (C) Fixture filings pursuant to Sections 9501, 9502, 9512, 9516,
29 and 9519.
- 30 (D) Security agreements covering personal and real property
31 pursuant to Section 9604.
- 32 (12) An assignment of a claim arising in tort, other than a
33 commercial tort claim, however Sections 9315 and 9322 apply
34 with respect to proceeds and priorities in proceeds.
- 35 (13) An assignment of a deposit account in a consumer
36 transaction, however Sections 9315 and 9322 apply with respect
37 to proceeds and priorities in proceeds.
- 38 (14) A security interest created by the assignment of the benefits
39 of a public construction contract under the Improvement Act of

1 1911 (Division 7 (commencing with Section 5000) of the Streets
2 and Highways Code).

3 (15) Transition property, as defined in Section 840 of the Public
4 Utilities Code, except to the extent that the provisions of this
5 division are referred to in Article 5.5 (commencing with Section
6 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities
7 Code, recovery property, as defined in Section 848 of the Public
8 Utilities Code, except to the extent that the provisions of this
9 division are referred to in Article 5.6 (commencing with Section
10 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities
11 Code, and water supply property, as defined in Section 849 of the
12 Public Utilities Code, except to the extent that the provisions of
13 this division are referred to in Article 5.7 (commencing with
14 Section 849) of Chapter 4 of Part 1 of Division 1 of the Public
15 Utilities Code.

16 (16) A claim or right of an employee or employee’s dependents
17 to receive workers’ compensation under Division 1 (commencing
18 with Section 50) or Division 4 (commencing with Section 3200)
19 of the Labor Code.

20 (17) A transfer by a government or governmental unit.

21 SEC. 5. Section 6537 is added to the Government Code, to
22 read:

23 6537. (a) The Legislature finds that it is in the best interest of
24 the communities on the Monterey Peninsula that any joint exercise
25 of powers authority formed under this article to which the Monterey
26 Peninsula Water Management District and one or more other public
27 agencies are members is authorized to issue water rate relief bonds,
28 hereafter “agency bonds,” the proceeds of which will be used to
29 purchase water rate relief bonds that are authorized to be issued
30 by an affiliate of a qualifying water utility in a financing order
31 issued pursuant to Article 5.7 (commencing with Section 849) of
32 Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to
33 fund any necessary reserves and to pay the costs of issuance of the
34 agency bonds. The agency bonds may be issued only if the
35 commission finds in a financing order that the issuance, due to the
36 availability of a federal or state income tax exemption, will provide
37 savings to water customers on the Monterey Peninsula.

38 (b) Notwithstanding any other provision of law, the joint powers
39 agency may issue bonds pursuant to Article 2 (commencing with
40 Section 6540) or Article 4 (commencing with Section 6584). If

1 the agency issues bonds under this section, the agency,
 2 notwithstanding Article 5 (commencing with Section 53760) of
 3 Chapter 4 of Part 1 of Division 2 of Title 5, shall not be eligible
 4 to file for bankruptcy pursuant to Chapter 9 (commencing with
 5 Section 901) of Title 11 of the United States Code as long as the
 6 bonds and any related financing costs are outstanding and unpaid
 7 and shall remain ineligible for a period of one year and one day
 8 after repayment of the bonds and any related financing costs.

9 SEC. 6. Article 5.7 (commencing with Section 849) is added
 10 to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code,
 11 to read:

12
 13 Article 5.7. Monterey Peninsula Water Supply Securitization
 14 Act
 15

16 849. For purposes of this article, the following definitions shall
 17 apply:

18 (a) “Ancillary agreement” means a bond insurance policy, letter
 19 of credit, reserve account, surety bond, swap arrangement, hedging
 20 arrangement, liquidity or credit support arrangement, or other
 21 similar agreement or arrangement entered into in connection with
 22 the issuance of water rate relief bonds that is designed to promote
 23 the credit quality and marketability of the bonds or to mitigate the
 24 risk of an increase in interest rates.

25 (b) “Customer” means an individual, governmental body, trust,
 26 business entity, or nonprofit organization that is a customer of the
 27 qualifying water utility, has responsibility for a service address
 28 provided water service by the utility, or consumes water that has
 29 been transmitted or distributed by means of distribution facilities.

30 (c) “District” means the Monterey Peninsula Water Management
 31 District, or its successor or assignee.

32 (d) “Financing costs” means the costs to issue, service, repay,
 33 or refinance water rate relief bonds, whether incurred or paid upon
 34 issuance of the bonds or over the life of the bonds, and approved
 35 for recovery by the commission in a financing order. “Financing
 36 costs” may include any of the following:

37 (1) Principal, interest, and redemption premiums that are payable
 38 on water rate relief bonds.

39 (2) A payment required under an ancillary agreement and an
 40 amount required to fund or replenish a reserve account or other

1 account established under an indenture, ancillary agreement, or
2 other financing document relating to the water rate relief bonds.

3 (3) Costs of retiring or funding an existing debt and equity
4 security of a qualifying water utility in connection with the issuance
5 of water rate relief bonds to the extent the securities were issued
6 for the purpose of financing water supply costs.

7 (4) Costs incurred by, on behalf of, or allocated to, a qualifying
8 water utility to obtain modifications of, or amendments to, an
9 indenture, financing agreement, security agreement, or similar
10 agreement or instrument relating to an existing secured or
11 unsecured obligation of a qualifying water utility or an affiliate of
12 a qualifying water utility, or any costs incurred by or allocated to
13 a qualifying water utility to obtain the consent, release, waiver, or
14 approval from the holder of the obligation, that are necessary to
15 be incurred to permit a qualifying water utility to issue or cause
16 the issuance of water rate relief bonds.

17 (5) Taxes, franchise fees, or license fees imposed on water
18 supply charges.

19 (6) Costs related to issuing and servicing water rate relief bonds
20 or the application for a financing order, including, without
21 limitation, servicing fees and expenses, trustee fees and expenses,
22 legal fees and expenses, accounting fees, administrative fees,
23 underwriting and placement fees, financial advisory fees,
24 capitalized interest, rating agency fees, and any other related costs
25 that are approved for recovery in the financing order, including
26 costs incurred by a public financing entity.

27 (7) Other costs *as specifically* authorized by a financing order.

28 (e) “Financing entity” means either or both of the following:

29 (1) The qualifying water utility, or its subsidiary or affiliate,
30 that is authorized by the commission to issue water rate relief
31 bonds, or acquire water supply property, or both, pursuant to a
32 financing order.

33 (2) A public financing entity authorized to issue water rate relief
34 bonds pursuant to a financing order.

35 (f) “Financing order” means an order of the commission adopted
36 in accordance with this article, which shall ~~include, without~~
37 ~~limitation, a procedure to require the expeditious approval by the~~
38 ~~commission of periodic adjustments to water supply charges to~~
39 ~~ensure the full and timely recovery of all water supply costs and~~
40 ~~all financing costs authorized for recovery under the financing~~

1 ~~order~~ include a procedure for periodic true-up adjustments to
 2 water supply charges.

3 (g) “Qualifying water utility” means California American Water,
 4 or any successor public utility described in Section 2701 of the
 5 Public Utilities Code that is engaged in the delivery of water to
 6 customers on the Monterey Peninsula.

7 (h) “Public financing entity” means any of the following:

8 (1) The district.

9 (2) A joint exercise of powers authority in which the district is
 10 a member.

11 (3) A public agency that is authorized to issue water rate relief
 12 bonds, or acquire water supply property, or both.

13 (i) “Service territory” means the geographical area within or
 14 surrounding the Monterey Peninsula that the qualifying water
 15 utility provides water service to in accordance with its certificate
 16 of public convenience and necessity and within which water supply
 17 charges may be imposed and collected as further described in the
 18 financing order.

19 (j) “True-up adjustment” means a formula-based adjustment
 20 to the water supply charges as they appear on customer bills that
 21 are necessary to correct for any over-collection or under-collection
 22 of the water supply charges authorized by a financing order and
 23 to otherwise ensure the timely and complete payment and recovery
 24 of water supply costs and financing costs over the authorized
 25 repayment term.

26 ~~(j)~~

27 (k) “Water rate relief bonds” means bonds, notes, certificates
 28 of participation or beneficial interest, or other evidences of
 29 indebtedness or ownership, issued pursuant to an executed
 30 indenture or other agreement of a financing entity, the proceeds
 31 of which are used, directly or indirectly, to provide, recover,
 32 finance, or refinance water supply costs and financing costs, and
 33 that are directly or indirectly secured by, or payable from, water
 34 supply property. Water rate relief bonds may be issued
 35 simultaneously by two financing entities, but water rate relief
 36 bonds shall not be issued after the seventh anniversary of a
 37 financing order issued in connection with commission proceeding
 38 A.12-04-019. Water rate relief bonds may be issued for a term not
 39 to exceed 30 years.

40 ~~(k)~~

1 (l) “Water supply activity” means an activity or activities by or
2 on behalf of a qualifying water utility in connection with the
3 acquisition and construction of infrastructure, plants, including,
4 ~~without limitation,~~ desalination facilities, pipelines, and other
5 facilities, to develop new sources of supply, as authorized by the
6 commission in proceeding A.12-04-019.

7 ~~(t)~~

8 (m) “Water supply charges” means those nonbypassable ~~rates~~
9 ~~and other charges, including, but not limited to, distribution,~~
10 ~~connection, disconnection, and termination rates and charges,~~
11 *charges* that are authorized by the commission in a financing order
12 to recover water supply costs and all financing costs specified in
13 a financing order.

14 ~~(m)~~

15 (n) “Water supply costs” means any reasonable and necessary
16 costs, including capitalized interest costs relating to regulatory
17 assets and capitalized costs associated with permitting, design, and
18 engineering work, approved in a financing order, incurred or
19 expected to be incurred by a qualifying water utility in undertaking
20 water supply activities. Water supply costs include preliminary
21 expenses and investments associated with water supply activities
22 that are incurred prior to the issuance of a financing order and that
23 are to be reimbursed from the proceeds of water rate relief bonds.

24 ~~(n)~~

25 (o) (1) “Water supply property” means the property right created
26 pursuant to this article, including, without limitation, the right,
27 title, and interest of the qualifying water utility or its transferee in
28 all of the following:

29 (A) In and to the water supply charges established pursuant to
30 a financing order, including all rights to obtain adjustments to the
31 water supply charges in accordance with Section 849.1 and the
32 financing order.

33 (B) To be paid the amount that is determined in a financing
34 order to be the amount that the qualifying water utility or its
35 transferee is lawfully entitled to receive pursuant to the provisions
36 of this article and the proceeds thereof, and in and to all revenues,
37 collections, claims, payments, money, or proceeds of or arising
38 from the water supply charges that are the subject of a financing
39 order.

1 (2) “Water supply property” shall constitute a current property
2 right notwithstanding the fact that the value of the property right
3 will depend on customers using water or, in those instances where
4 customers are customers of the qualifying water utility, the
5 qualifying water utility performing certain services.

6 849.1. (a) (1) The commission may issue financing orders in
7 accordance with this article to facilitate the recovery, financing,
8 or refinancing of water supply costs. A financing order may be
9 adopted only upon the application of the qualifying water utility
10 and shall become effective in accordance with its terms.

11 (2) Commencing January 1, 2015, the qualifying water utility
12 may apply to the commission for a determination that ~~some or all~~
13 *no more than 50 percent* of the qualifying water utility’s water
14 supply costs may be recovered through water supply charges,
15 which would be water supply property under this article.

16 ~~(3) The qualifying water utility may request this determination~~
17 ~~by the commission in a separate proceeding or in an existing~~
18 ~~proceeding, or both.~~ A public financing entity that proposes to
19 issue water rate relief bonds pursuant to Article 8 of Chapter 3 of
20 Part 5 of the Monterey Peninsula Water Management District Law,
21 as added by Chapter 527 of the Statutes of 1977, or Section 6537
22 of the Government Code, shall provide information as requested
23 by the commission in connection with the application and
24 proceeding.

25 (4) In its application the qualifying water utility shall specify
26 how customers may benefit from reduced rates on a present value
27 basis through the issuance of water rate relief bonds as compared
28 to the use of traditional utility financing mechanisms. If a public
29 financing entity proposes to issue water rate relief bonds, it shall
30 provide evidence to the commission that the issuance of water rate
31 relief bonds by the public financing entity, due to the availability
32 of a federal or state income tax exemption, will provide savings
33 to water customers on the Monterey Peninsula.

34 (5) The commission shall establish procedures for the
35 expeditious processing of financing order applications, including
36 the approval or disapproval of the qualifying water utility’s
37 application, within 180 days of the application submission.

38 ~~(6) The commission shall not refuse to allow the recovery of~~
39 ~~any costs associated with the performance of water supply activities~~
40 ~~by a qualifying water utility solely because the qualifying water~~

1 utility has elected or may elect to finance the performance of those
2 activities through a financing mechanism other than the issuance
3 of water rate relief bonds as long as that alternative financing
4 mechanism is reasonable and prudent.

5 (b) The commission shall authorize the imposition and collection
6 of water supply charges in one or more financing orders if the
7 commission determines, as part of its findings in connection with
8 the financing order, that ~~the~~ *each* imposition and collection of the
9 water supply charges, and the issuance of water rate relief bonds
10 payable from those charges, would reduce the rates on a present
11 value basis that customers within the qualifying water utility's
12 service territory would pay as compared to the use of traditional
13 utility financing mechanisms, which shall be calculated using the
14 qualifying water utility's corporate debt and equity in the ratio
15 approved by the commission at the time of the issuance of the
16 financing order. The commission's determination shall consider
17 all customer payments including rates, surcharges, taxes, water
18 supply charges, and any other payments made by customers for
19 water supply activities. ~~Water supply charges shall only be imposed~~
20 ~~on existing and future customers in the service territory as~~
21 ~~determined in the financing order. Customers within the service~~
22 ~~territory shall continue to pay water supply charges until the water~~
23 ~~rate relief bonds and all financing costs are paid in full by the~~
24 ~~financing entity. Once the water rate relief bonds and all financing~~
25 ~~costs have been paid in full, the payment by customers of water~~
26 ~~supply charges shall be terminated.~~

27 (e) ~~The commission shall establish in a financing order an~~
28 ~~effective mechanism that ensures recovery of water supply costs~~
29 ~~and financing costs through water supply charges will be~~
30 ~~nonbypassable and will be recovered from existing and future~~
31 ~~customers in the service territory.~~

32 (c) *The commission shall establish in a financing order an*
33 *effective mechanism that ensures recovery of water supply costs*
34 *and financing costs through nonbypassable water supply charges.*
35 *Water supply charges shall be imposed only on existing and future*
36 *customers of the qualifying water utility's service territory, and*
37 *those customers shall be required to pay those charges until the*
38 *water rate relief bonds and all financing costs are paid in full by*
39 *the financing entity, at which time those charges shall be*
40 *terminated. Water supply charges shall be irrevocable,*

1 *notwithstanding any true-up adjustment pursuant to subdivision*
2 *(g).*

3 (d) A financing order may specify how amounts collected from
4 a customer shall be allocated between water supply charges and
5 other charges of the qualifying water ~~utility~~ *utility, consistent with*
6 *Section 779.2.*

7 (e) (1) Notwithstanding Section 455.5 or 1708, or any other
8 provision of law, and except as otherwise provided in ~~this~~
9 ~~subdivision with respect to adjustment of water supply charges~~
10 ~~pursuant to subdivision (g),~~ water supply property that has been
11 made the basis for the issuance of water rate relief bonds, the
12 financing order, and the water supply charges shall be irrevocable.
13 The commission shall not, either by rescinding, altering, or
14 amending the financing order or otherwise, revalue or revise for
15 ratemaking purposes the water supply costs or the financing costs,
16 determine that the water supply charges are unjust or unreasonable,
17 or in any way reduce or impair the value of water supply property
18 either directly or indirectly by taking water supply charges into
19 account when setting other rates for the qualifying water utility.
20 The amount of revenues arising shall not be subject to reduction,
21 impairment, postponement, or termination.

22 (2) The State of California does hereby pledge and agree with
23 the qualifying water utility, owners of water supply property, the
24 financing entities, and owners of water rate relief bonds that the
25 state shall neither limit nor alter, except as otherwise provided
26 with respect to *true-up* adjustment of water supply charges pursuant
27 to subdivision (g), the water supply charges, water supply property,
28 financing orders, or any rights under a financing order until the
29 water rate relief bonds, together with the interest on the bonds,
30 and all related financing costs are fully paid and discharged, or,
31 in the alternative, have been refinanced through an additional issue
32 of water rate relief bonds, provided nothing contained in this
33 section shall preclude the limitation or alteration if and when
34 adequate provision shall be made by law for the protection of the
35 qualifying water utility, financing entities, and owners. The
36 financing entity is authorized to include this pledge and undertaking
37 for the state in the water rate relief bonds. ~~Notwithstanding any~~
38 ~~other provision of this section, the commission shall approve~~
39 ~~adjustments to the water supply charges as may be necessary to~~

1 ~~ensure timely payment of all water supply costs and all financing~~
2 ~~costs that are the subject of the financing order.~~

3 (f) (1) Neither financing orders nor water rate relief bonds
4 issued under this article shall constitute a debt or liability of the
5 state or of any political subdivision of the state except a public
6 financing entity, nor shall they constitute a pledge of the full faith
7 and credit of the state or any of its political subdivisions, but are
8 payable solely from the funds provided therefor under this article
9 and shall be consistent with Sections 1 and 18 of Article XVI of
10 the California Constitution. This subdivision shall not preclude
11 bond guarantees or enhancements pursuant to this article or
12 pursuant to Article 8 of Chapter 3 of Part 5 of the Monterey
13 Peninsula Water Management District Law, as added by Chapter
14 527 of the Statutes of 1977, or Section 6537 of the Government
15 Code. A water rate relief bond shall contain on the face of the bond
16 a statement to the following effect: “Neither the full faith and credit
17 nor the taxing power of the State of California is pledged to the
18 payment of the principal of, or interest on, this bond.”

19 (2) The issuance of water rate relief bonds under this article
20 shall not directly, indirectly, or contingently obligate the state or
21 any political subdivision of the state to levy or to pledge any form
22 of taxation therefor or to make any appropriation for their payment.
23 Nothing in this paragraph shall prevent or be construed to prevent
24 a public financing entity from pledging water supply property, or
25 payments made on water rate relief bonds, together with any
26 reserves or overcollateralization amounts approved in a financing
27 order, to the payment of the water rate relief bonds.

28 ~~(g) The commission shall, in any financing order, provide for~~
29 ~~a procedure for the expeditious approval by the commission of~~
30 ~~periodic adjustments, no less than annually, to the water supply~~
31 ~~charges that are the subject of the financing order to ensure the~~
32 ~~full and timely recovery of all water supply costs and all financing~~
33 ~~costs authorized for recovery under the financing order. If an~~
34 ~~adjustment to the water supply charges are necessary, the qualifying~~
35 ~~water utility shall file an advice letter with the commission to~~
36 ~~implement the adjustment.~~

37 *(g) Any water supply charge authorized by a financing order*
38 *shall appear on customer bills as a stand-alone, line-item*
39 *surcharge. The commission shall, in any financing order, provide*
40 *for a periodic true-up adjustment to water supply charges, which*

1 *shall be made at least annually and may be made more frequently.*
2 *The qualifying water utility shall file an advice letter with the*
3 *commission to implement any true-up adjustment.*

4 (h) Water supply charges are water supply property when, and
5 to the extent that, a financing order authorizing the water supply
6 charges has become effective in accordance with this article, and
7 the water supply property shall thereafter continuously exist as
8 property for all purposes with all of the rights and privileges of
9 this article for the period and to the extent provided in the financing
10 order, but in any event until the water rate relief bonds, including
11 all principal, premium, if any, and interest with respect to the bonds
12 and all other financing costs are paid in full. A financing order
13 may provide that the creation of water supply property shall be
14 simultaneous with the sale of the water supply property to a
15 transferee or assignee as provided in the application and the pledge
16 of the water supply property to secure water rate relief bonds.

17 (i) Any surplus water supply charges in excess of the necessary
18 amounts to pay the principal premium, if any, and interest on the
19 water rate relief bonds and all other financing costs shall be credited
20 to customers through the adjustment mechanism described in
21 subdivision (g) or used to prepay or defease water rate relief bonds,
22 so long as this would not result in a recharacterization of the tax,
23 accounting, and other intended characteristics of the financing,
24 including, but not limited to, the following:

25 (1) Avoiding the recognition of debt on the qualifying water
26 utility's balance sheet for financial accounting and regulatory
27 purposes.

28 (2) Treating the water rate relief bonds as debt of the qualifying
29 water utility or its affiliates for federal income tax purposes.

30 (3) Treating the transfer of the water supply property by the
31 qualifying water utility as a true sale for bankruptcy purposes.

32 (4) Avoiding any adverse impact of the financing on the
33 qualifying water utility's credit rating.

34 849.2. (a) A qualifying water utility for which a financing
35 order has been issued shall cause the proceeds of any water rate
36 relief bonds issued pursuant to a financing order to be placed in a
37 separate account. A qualifying water utility may use the proceeds
38 of the issuance of water rate relief bonds for paying water supply
39 costs and financing costs and for no other purpose.

1 (b) A financing order may require the qualifying utility to file
2 with the commission a periodic report showing the receipt and
3 disbursement of proceeds of water rate relief bonds. A financing
4 order may authorize the staff of the commission to review and
5 audit the books and records of the qualifying water utility relating
6 to the receipt and disbursement of proceeds of water rate relief
7 bonds. The provisions of this subdivision shall not be construed
8 to limit the authority of the commission to investigate the practices
9 of the qualifying utility or to audit the books and records of the
10 qualifying water utility.

11 (c) A qualifying water utility for which a financing order has
12 been issued shall annually provide to its customers a concise
13 explanation of the water supply charges approved in a financing
14 order, as modified by subsequent issuances of water rate relief
15 bonds authorized under a financing order, if any, and by application
16 of the *true-up* adjustment mechanism as provided in the financing
17 order. These explanations *shall be made after the annual true-up*
18 *adjustment pursuant to subdivision (g) of Section 849.1 and prior*
19 *to, or simultaneous with, the effective date of the adjustment, and*
20 *may be made by bill inserts, Internet Web site information, or other*
21 *appropriate means. If water rate relief bonds are issued by a public*
22 *financing entity, the public financing entity, or its trustee or*
23 *representative, shall provide the information to the qualifying water*
24 *utility as reasonably requested in order to comply with its*
25 *obligations under this section.*

26 (d) The failure of a qualifying water utility to apply the proceeds
27 of water rate relief bonds in a reasonable, prudent, and appropriate
28 manner or otherwise comply with any provision of this section
29 shall not invalidate, impair, or affect any financing order, water
30 supply property, water supply charges, or water rate relief bonds.

31 849.3. (a) Financing entities may issue water rate relief bonds
32 upon approval by the commission in the financing order. Water
33 rate relief bonds shall be nonrecourse to the credit or any assets
34 of the qualifying water utility, other than the water supply property
35 as specified in the financing order.

36 (b) A qualifying water utility may sell and assign all or portions
37 of its interest in water supply property to an affiliate. A qualifying
38 water utility or its affiliates may sell or assign their interests to one
39 or more financing entities authorized under this article that make
40 that property the basis for issuance of water rate relief bonds to

1 the extent approved in the financing order. A qualifying water
2 utility, its affiliates, or financing entities may pledge and assign
3 water supply property as collateral, directly or indirectly, to the
4 extent approved in the financing order providing for a security
5 interest in the water supply property, in the manner set forth in
6 Section 849.4. In addition, water supply property may be sold or
7 assigned by either of the following:

8 (1) The financing entity or a trustee for the holders of water rate
9 relief bonds or the holder of an ancillary agreement in connection
10 with the exercise of remedies upon a default.

11 (2) A person acquiring the water supply property after a sale or
12 assignment made pursuant to this article.

13 (c) To the extent that any interest in water supply property is
14 sold, assigned, or pledged as collateral, the commission shall
15 authorize the qualifying water utility to contract with the financing
16 entity or entities that it will continue to operate its system to
17 provide service to its customers, will collect water supply charges
18 for the benefit and account of the financing entities and their
19 pledgees, and will account for and remit these amounts to or for
20 the account of the financing entities and their pledgees. Contracting
21 with a financing entity in accordance with that authorization shall
22 not impair or negate the characterization of the sale, assignment,
23 or pledge as an absolute transfer, a true sale, or security interest,
24 as applicable.

25 (d) Water supply property that is specified in a financing order
26 shall constitute an existing, present property right, notwithstanding
27 the fact that the imposition and collection of water supply charges
28 depend on the qualifying water utility continuing to provide water
29 service or continuing to perform its servicing functions relating to
30 the collection of water supply charges or on the level of future
31 water consumption. Water supply property shall exist whether or
32 not the water supply charges have been billed, have accrued, or
33 have been collected and notwithstanding the fact that the value for
34 a security interest in the water supply property, or amount of the
35 water supply property, is dependent on the future provision of
36 service to customers by the qualifying water utility. All water
37 supply property specified in a financing order shall continue to
38 exist until the water supply bonds issued pursuant to a financing
39 order and all other financing costs are paid in full.

1 (e) If a qualifying water utility defaults on any required payment
2 of water supply charge revenues, a court, upon application by an
3 interested party and without limiting any other remedies available
4 to the applying party, shall order the sequestration and payment
5 of the water supply charges, and the proceeds of the water supply
6 charges, for the benefit of bondholders, any assignee and financing
7 entities or their pledgees, and the counterparties to any ancillary
8 agreement. The order shall remain in full force and effect
9 notwithstanding bankruptcy, reorganization, or other insolvency
10 proceedings with respect to the qualifying water utility or any
11 affiliate of the qualifying water utility.

12 (f) Water supply property, water supply charges, and the
13 interests of an assignee, bondholder or financing entity, or any
14 pledgee in water supply property and water supply charges are not
15 subject to setoff, counterclaim, surcharge, or defense by the
16 qualifying utility or any other person or in connection with the
17 bankruptcy, reorganization, or other insolvency proceeding of the
18 qualifying water utility, any affiliate of the qualifying water utility,
19 or any other entity.

20 (g) Notwithstanding Section 1708 or any other provision of law,
21 any requirement under this article, or a financing order, that the
22 commission take action with respect to the subject matter of a
23 financing order, shall be binding upon the commission, as it may
24 be constituted from time to time, and any successor agency exerting
25 functions similar to the commission. The commission shall not
26 have authority to rescind, alter, or amend that requirement in a
27 financing order. The approval by the commission in a financing
28 order of the issuance by the qualifying water utility or a financing
29 entity of water rate relief bonds shall include the approvals, if any,
30 required by Article 5 (commencing with Section 816) and Section
31 701.5. Section 701.5 shall not be construed to prohibit the issuance
32 of water rate relief bonds upon the terms and conditions approved
33 by the commission in a financing order. Section 851 is not
34 applicable to the transfer or pledge of water supply property, the
35 issuance of water rate relief bonds, or related transactions approved
36 in a financing order.

37 (h) A financing entity issuing water rate relief bonds shall
38 include in its preliminary notice and final report for the water rate
39 relief bonds submitted to the California Debt and *Investment*
40 Advisory Commission pursuant to Section 8855 of the Government

1 Code, a statement that the water rate relief bonds are being issued
2 pursuant to this section. A financing entity issuing water rate relief
3 bonds shall include in its final report for the water rate relief bonds
4 submitted to the California Debt and Investment Advisory
5 Commission pursuant to Section 8855 of the Government Code,
6 the savings realized by issuing the water rate relief bonds rather
7 than using traditional utility financing mechanisms.

8 849.4. (a) A security interest in water supply property is valid,
9 is enforceable against the pledgor and third parties, is subject to
10 the rights of any third party holding a security interest in the water
11 supply property perfected in the manner described in this section,
12 and attaches when all of the following occur:

13 (1) The commission has issued the financing order authorizing
14 the water supply charges included in the water supply property.

15 (2) Value has been given by the pledgees of the water supply
16 property.

17 (3) The pledgor has signed a security agreement that includes
18 an indenture or financing agreement relating to the issuance of the
19 water rater relief bonds covering the water supply property.

20 (b) A valid and enforceable security interest in water supply
21 property is perfected when it has attached and when a financing
22 statement has been filed in accordance with Chapter 5
23 (commencing with Section 9501) of Division 9 of the Commercial
24 Code, naming the pledgor of the water supply property as “debtor”
25 and identifying the water supply property. Any description of the
26 water supply property shall be sufficient if it refers to the financing
27 order creating the water supply property. A copy of the financing
28 statement shall be filed with the commission by the qualifying
29 water utility that is the pledgor or transferor of the water supply
30 property, and the commission may require the qualifying water
31 utility to make other filings with respect to the security interest in
32 accordance with procedures it may establish, provided that the
33 filings do not affect the perfection of the security interest.

34 (c) A perfected security interest in water supply property is a
35 continuously perfected security interest in all revenues and
36 proceeds arising with respect to the water supply property, whether
37 or not the revenues or proceeds have accrued. Conflicting security
38 interests shall rank according to priority in time of perfection.
39 Water supply property shall constitute property for all purposes,
40 including for contracts securing water rate relief bonds, whether

1 or not the revenues and proceeds arising with respect to the water
2 supply property have accrued.

3 (d) Subject to the terms of the security agreement covering the
4 water supply property and the rights of any third party holding a
5 security interest in the water supply property perfected in the
6 manner described in this section, the validity and relative priority
7 of a security interest created under this section is not defeated or
8 adversely affected by the commingling of revenues arising with
9 respect to the water supply property with other funds of the
10 qualifying water utility that is the pledgor or transferor of the water
11 supply property, or by any security interest in a deposit account
12 of that qualifying water utility perfected under Division 9
13 (commencing with Section 9101) of the Commercial Code into
14 which the revenues are deposited. Subject to the terms of the
15 security agreement, upon compliance with the requirements of
16 subdivision (b) of Section 9312 of the Commercial Code, the
17 pledgees of the water supply property shall have a perfected
18 security interest in all cash and deposit accounts of the qualifying
19 water utility in which revenues arising with respect to the water
20 supply property have been commingled with other funds, but the
21 perfected security interest shall be limited to an amount not greater
22 than the amount of the revenues with respect to the water supply
23 property received by the qualifying water utility within 12 months
24 before either of the following:

25 (1) A default under the security agreement.

26 (2) The institution of insolvency proceedings by or against the
27 qualifying water utility, less payments from the revenues to the
28 pledgees during that 12-month period.

29 (e) If a default occurs under the security agreement covering
30 the water supply property, the pledgees of the water supply
31 property, subject to the terms of the security agreement, shall have
32 all rights and remedies of a secured party upon default under
33 Division 9 (commencing with Section 9101) of the Commercial
34 Code, and shall be entitled to foreclose or otherwise enforce their
35 security interest in the water supply property, subject to the rights
36 of any third party holding a prior security interest in the water
37 supply property perfected in the manner provided in this section.
38 In addition, the commission may require, in the financing order
39 creating the water supply property, that in the event of default by
40 the qualifying water utility in payment of revenues arising with

1 respect to the water supply property, the commission and any
2 successor to the commission, upon the application by the pledgees
3 or transferees, including transferees under Section 849.5, of the
4 water supply property, and without limiting any other remedies
5 available to the pledgees or transferees by reason of the default,
6 shall order the sequestration and payment to the pledgees or
7 transferees of revenues arising with respect to the water supply
8 property. Any order shall remain in full force and effect
9 notwithstanding bankruptcy, reorganization, or other insolvency
10 proceedings with respect to the debtor, pledgor, or transferor of
11 the water supply property. Any surplus in excess of amounts
12 necessary to pay principal, premium, if any, interest on the water
13 rate relief bonds, and other financing costs arising under the
14 security agreement, shall be remitted to the debtor or to the pledgor
15 or transferor.

16 (f) Sections 9204 and 9205 of the Commercial Code shall apply
17 to a pledge of water supply property by a qualifying water utility,
18 an affiliate of a qualifying water utility, or a financing entity, other
19 than a public financing entity.

20 (g) (1) This section sets forth the terms by which a consensual
21 security interest shall be created and perfected in the water supply
22 property. Unless otherwise ordered by the commission with respect
23 to any series of water rate relief bonds on or prior to the issuance
24 of the series, there shall exist a statutory lien as provided in this
25 subdivision.

26 (2) Upon the effective date of the financing order, there shall
27 exist a first priority lien on all water supply property then existing
28 or thereafter arising pursuant to the terms of the financing order.
29 This lien shall automatically arise pursuant to this section without
30 any action on the part of the qualifying water utility, any affiliate
31 of the qualifying water utility, the issuing entity, or any other
32 person. This lien shall secure all obligations, then existing and
33 subsequently arising, to the holders of the water rate relief bonds
34 issued pursuant to the financing order, the trustee or representative
35 for the holders, and any other entity specified in the financing
36 order. The persons for whose benefit this lien is established shall,
37 upon occurrence of any defaults specified in the financing order,
38 have all rights and remedies of a secured party upon default under
39 Chapter 1 (commencing with Section 9101) of Division 9 of the
40 Commercial Code, and shall be entitled to foreclose or otherwise

1 enforce this statutory lien in the water supply property. This lien
2 shall attach to the water supply property regardless of who shall
3 own, or shall subsequently be determined to own, the water supply
4 property, including any qualifying water utility, affiliate of the
5 qualifying water utility, financing entity, or any other person. This
6 lien shall be valid, perfected, and enforceable against the owner
7 of the water supply property and all third parties upon the
8 effectiveness of the financing order without any further public
9 notice, provided, however, that any person may, but shall not be
10 required to, file a financing statement in accordance with
11 subdivision (b). These financing statements may be protective
12 filings and shall not be evidence of the ownership of the water
13 supply property.

14 (h) Notwithstanding any other provision of law, Section 5451
15 of the Government Code shall apply to any pledge by the public
16 financing entity of water supply property or other security for any
17 water rate relief bonds issued by a public financing entity.

18 849.5. (a) A sale, assignment, or transfer of water supply
19 property by a qualifying water utility to an affiliate or to a financing
20 entity, or by an affiliate of a qualifying water utility or a financing
21 entity to another financing entity, which the parties, in the
22 governing documentation, have expressly stated to be a sale or
23 other absolute transfer, in a transaction approved in a financing
24 order, shall be treated as an absolute transfer of all of the
25 transferor's right, title, and interest, as in a true sale, and not as a
26 pledge or other financing order of the water supply property, other
27 than for federal and state income and franchise tax purposes.

28 (b) The characterization of the sale, assignment, or transfer as
29 an absolute transfer and true sale and the corresponding
30 characterization of the property interest of the purchaser shall not
31 be affected or impaired by, among other things, the occurrence of
32 any of the following:

33 (1) Commingling of water supply *charge* revenues with other
34 amounts.

35 (2) The retention by the seller of either of the following:

36 (A) A partial or residual interest, including an equity interest,
37 in the water supply property, whether direct or indirect, subordinate
38 or otherwise.

1 (B) The right to recover costs associated with taxes, franchise
2 fees, or license fees imposed on the collection of water supply
3 *charge* revenues.

4 (3) Any recourse that the purchaser may have against the seller.

5 (4) Any indemnification rights, obligations, or repurchase rights
6 made or provided by the seller.

7 (5) The obligation of the seller to collect water supply *charge*
8 revenues on behalf of an assignee.

9 (6) The treatment of the sale, assignment, or transfer for tax,
10 financial reporting, or other purposes.

11 (7) Any *true-up* adjustment of the water supply charges as
12 provided in the financing order.

13 (c) A sale, assignment, or transfer of water supply property shall
14 be deemed perfected against third persons when both of the
15 following occur:

16 (1) The commission issues the financing order authorizing the
17 water supply charges included in the water supply property.

18 (2) An assignment of the water supply property in writing has
19 been executed and delivered to the transferee.

20 (d) As between bona fide assignees of the same right for value
21 without notice, the assignee first filing a financing statement in
22 accordance with Chapter 5 (commencing with Section 9501) of
23 Division 9 of the Commercial Code naming the assignor of the
24 water supply property as debtor and identifying the water supply
25 property has priority. Any description of the water supply property
26 shall be sufficient if it refers to the financing order creating the
27 water supply property. A copy of the financing statement shall be
28 filed by the assignee with the commission, and the commission
29 may require the assignor or the assignee to make other filings with
30 respect to the transfer in accordance with procedures it may
31 establish, but these filings shall not affect the perfection of the
32 transfer.

33 849.6. A successor to the qualified water utility, whether
34 pursuant to bankruptcy, reorganization, or other insolvency
35 proceeding, or pursuant to merger, sale, or transfer, by operation
36 of law, or otherwise, shall perform and satisfy all obligations of
37 the qualifying water utility pursuant to this article in the same
38 manner and to the same extent as the qualified water utility,
39 including, but not limited to, collecting and paying to the holders
40 of water rate relief bonds or any financing entities or their pledgees

1 revenues arising with respect to the water supply property sold to
2 the applicable financing entity or pledged to secure water rate relief
3 bonds.

4 SEC. 7. Section 1731 of the Public Utilities Code is amended
5 to read:

6 1731. (a) The commission shall set an effective date when
7 issuing an order or decision. The commission may set the effective
8 date of an order or decision prior to the date of issuance of the
9 order or decision.

10 (b) (1) After an order or decision has been made by the
11 commission, a party to the action or proceeding, or a stockholder,
12 bondholder, or other party pecuniarily interested in the public
13 utility affected may apply for a rehearing in respect to matters
14 determined in the action or proceeding and specified in the
15 application for rehearing. The commission may grant and hold a
16 rehearing on those matters, if in its judgment sufficient reason is
17 made to appear. A cause of action arising out of any order or
18 decision of the commission shall not accrue in any court to any
19 corporation or person unless the corporation or person has filed
20 an application to the commission for a rehearing within 30 days
21 after the date of issuance or within 10 days after the date of
22 issuance in the case of an order issued pursuant to either Article
23 5 (commencing with Section 816) or Article 6 (commencing with
24 Section 851) of Chapter 4 relating to security transactions and the
25 transfer or encumbrance of utility property.

26 (2) The commission shall notify the parties of the issuance of
27 an order or decision by either mail or electronic transmission.
28 Notification of the parties may be accomplished by one of the
29 following methods:

30 (A) Mailing the order or decision to the parties to the action or
31 proceeding.

32 (B) If a party to an action or proceeding consents in advance to
33 receive notice of any order or decision related to the action or
34 proceeding by electronic mail address, notification of the party
35 may be accomplished by transmitting an electronic copy of the
36 official version of the order or decision to the party if the party
37 has provided an electronic mail address to the commission.

38 (C) If a party to an action or proceeding consents in advance to
39 receive notice of any order or decision related to the action or
40 proceeding by electronic mail address, notification of the party

1 may be accomplished by transmitting a link to an Internet Web
2 site where the official version of the order or decision is readily
3 available to the party if the party has provided an electronic mail
4 address to the commission.

5 (3) For the purposes of this article, “date of issuance” means
6 the mailing or electronic transmission date that is stamped on the
7 official version of the order or decision.

8 (c) A cause of action arising out of an order or decision of the
9 commission construing, applying, or implementing the provisions
10 of Chapter 4 of the Statutes of the 2001–02 First Extraordinary
11 Session that (1) relates to the determination or implementation of
12 the department’s revenue requirements, or the establishment or
13 implementation of bond or power charges necessary to recover
14 those revenue requirements, or (2) in the sole determination of the
15 Department of Water Resources, the expedited review of order or
16 decision of the commission is necessary or desirable, for the
17 maintenance of any credit ratings on any bonds or notes of the
18 department issued pursuant to Division 27 (commencing with
19 Section 80000) of the Water Code or for the department to meet
20 its obligations with respect to any bonds or notes pursuant to that
21 division, shall not accrue in any court to any corporation or person
22 unless the corporation or person has filed an application with the
23 commission for a rehearing within 10 days after the date of
24 issuance of the order or decision. The Department of Water
25 Resources shall notify the commission of any determination
26 pursuant to paragraph (2) of this subdivision prior to the issuance
27 by the commission of any order or decision construing, applying,
28 or implementing the provisions of Chapter 4 of the Statutes of the
29 2001–02 First Extraordinary Session. The commission shall issue
30 its decision and order on rehearing within 20 days after the filing
31 of the application.

32 (d) A cause of action arising out of an order or decision of the
33 commission construing, applying, or implementing the provisions
34 of Article 5.7 (commencing with Section 849) of Chapter 4 shall
35 not accrue in any court to any entity or person unless the entity or
36 person has filed an application to the commission for a rehearing
37 within 10 days after the date of issuance of the order or decision.
38 The commission shall issue its decision and order on rehearing
39 within 210 days after the filing of that application.

1 SEC. 8. Section 1770 is added to the Public Utilities Code, to
2 read:

3 1770. The following procedures shall apply to the judicial
4 review of an order or decision of the commission in interpreting,
5 implementing, or applying the provisions of Article 5.7
6 (commencing with Section 849) of Chapter 4 of Part 1 of Division
7 1:

8 (a) Within 30 days after the commission issues its order or
9 decision denying the application for a rehearing or, if the
10 application is granted, within 30 days after the commission issues
11 its decision on rehearing, an aggrieved party may petition for a
12 writ of review in the California Supreme Court for the purpose of
13 determining the lawfulness of the original order or decision or of
14 the order or decision on the rehearing. If the writ is issued, it shall
15 be made returnable at a time and place specified by court order
16 and shall direct the commission to certify its record in the case to
17 the court within the time specified. No order of the commission
18 interpreting, implementing, or applying the provisions of Article
19 5.7 (commencing with Section 849) of Chapter 4 of Part 1 of
20 Division 1 shall be subject to review in a court of appeals.

21 (b) The petition for review shall be served upon the executive
22 director of the commission either personally or by service at the
23 office of the commission.

24 (c) For purposes of this section, the issuance of a decision or
25 the granting of an application shall be construed to have occurred
26 on the date when the commission mails the decision or grant to
27 the parties of the action or proceeding.

28 (d) To the extent that the provisions do not conflict, provisions
29 in this article shall apply to actions under this section.

30 SEC. 9. Article 8 (commencing with Section 685) is added to
31 Chapter 3 of Part 5 of the Monterey Peninsula Water Management
32 District Law (Chapter 527 of the Statutes of 1977), to read:

33

34 Article 8. Tax Exempt Water Relief Reduction Bonds

35

36 685. (a) The district may issue water rate relief bonds for the
37 purpose of purchasing water rate relief bonds issued by another
38 financing entity pursuant to a financing order authorized pursuant
39 to Article 5.7 (commencing with Section 849) of Chapter 4 of Part
40 1 of Division 1 of the Public Utilities Code, to fund any necessary

1 reserves and to pay the costs of issuance of the water rate relief
2 bonds. These bonds may be issued only if the commission finds
3 in the financing order that the issuance, due to the availability of
4 a federal or state income tax exemption, will provide savings to
5 water customers on the Monterey Peninsula. These bonds issued
6 by the district, or “district bonds,” shall be denominated “Monterey
7 Peninsula Water Management District Water Rate Relief Bonds.”
8 These bonds shall have designations, details, and terms, be payable
9 at times and places, and be sold in a manner as determined by the
10 board. The resolution shall authorize the district to enter into a
11 trust agreement or similar security agreement to secure payment
12 of the district bonds.

13 (b) The district bonds shall be special limited obligations of the
14 district, and shall be payable solely from payments made on the
15 water rate relief bonds purchased with the proceeds of the district
16 bonds and any reserve funded from the proceeds of the district
17 bonds. The bonds shall not be payable from any other funds or
18 assets of the district, and neither the full faith and credit nor taxing
19 power of the district shall be pledged to or exercised for the
20 payment of the bonds.

21 686. If the district authorizes the issuance of bonds under
22 Section 685, the district, notwithstanding Article 5 (commencing
23 with Section 53760) of Chapter 4 of Part 1 of Division 2 of Title
24 5 of the Government Code, shall not be eligible to file for
25 bankruptcy pursuant to Chapter 9 (commencing with Section 901)
26 of Title 11 of the United States Code as long as the district bonds
27 and related financing costs are outstanding and unpaid and shall
28 remain ineligible for a period of one year and one day following
29 the full payment of the bonds and costs.

30 SEC. 10. The provisions of this act are severable. If any
31 provision of this act or its application is held invalid, that invalidity
32 shall not affect other provisions or applications that can be given
33 effect without the invalid provision or application.

34 SEC. 11. The Legislature finds and declares that a special law
35 is necessary and that a general law cannot be made applicable
36 within the meaning of Section 16 of Article IV of the California
37 Constitution because of the unique circumstances applicable only
38 to the Monterey Peninsula, Californian American Water, and the
39 Monterey Peninsula Water Management District. Therefore, this
40 special statute is necessary.

1 SEC. 12. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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