

Assembly Bill No. 389

CHAPTER 928

An act to amend Sections 1777.2 and 1784 of the Fish and Game Code, and to add Article 8.5 (commencing with Section 560) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 14, 1995. Filed
with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 389, Cannella. Agriculture: environmental farming: wetland habitat.

(1) The Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993 defines "bank site" and "mitigation bank site" for the purposes of that act. Excluded from these definitions is land on which rice is produced that provides significant wetland habitat value.

This bill, instead, would provide, among other things, that a "bank site" or "mitigation bank site" may include any lands on which rice is grown, as long as those lands are managed as ricelands and meet other specified criteria.

(2) Existing law sets forth various powers and duties of the Department of Food and Agriculture.

This bill would enact the Cannella Environmental Farming Act of 1995. The bill would require the department to establish and oversee an environmental farming program to provide incentives to farmers whose practices promote the well-being of ecosystems, air quality, and wildlife and their habitat. The bill would require the Secretary of Food and Agriculture to convene a Scientific Advisory Panel on Environmental Farming for the purpose of providing advice and assistance with respect to various matters.

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

SECTION 1. Section 1777.2 of the Fish and Game Code is amended to read:

1777.2. "Bank site" or "mitigation bank site" means a publicly or privately owned and operated site on which wetlands have been or will be created in accordance with this chapter to compensate for adverse impacts caused by removal or fill permit activities authorized pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.). "Bank site" or "mitigation bank site" may include land on which rice is grown as long as those lands are

managed as ricelands and those lands meet the other requirements of Section 1784.

SEC. 2. Section 1784 of the Fish and Game Code is amended to read:

1784. (a) The department, in cooperation with those agencies specified in Section 1786, shall adopt regulations that establish standards and criteria for the bank site qualification process, for the evaluation of wetland habitat values created at the bank sites, and for the operation and evaluation of bank sites, and any other regulations that are necessary to implement this chapter.

These criteria shall require, at a minimum, that the newly created wetland provide the hydrologic, vegetative, and wildlife characteristics, including the food web components, of a naturally occurring wetland system that is equal to the site being mitigated.

(b) With respect to bank site standards and operator qualifications, the department shall consider, at a minimum, all of the following criteria:

(1) A requirement that the bank site have a reliable, adequate, and available water supply necessary to provide wetland values. For wetlands dependent only on rainfall, rainfall satisfies this requirement.

(2) The relative ease or difficulty of converting uplands into wetlands at the bank site.

(3) The anticipated maintenance necessary to sustain the recreated and created wetlands at the bank site.

(4) The proximity of the bank site to other established preserves or natural features historically associated with abundant wildlife values.

(5) The proximity of the bank site to urban or populated areas that could reduce the bank site's long-term biological values.

(6) The demonstrated ability of the bank site operator to create, administer, maintain, and protect the bank site in perpetuity in its enhanced state, including financial, technical, and management ability.

(7) The relative abundance or scarcity of the wetland type to be created at the bank site.

(c) A bank site or mitigation bank site may include any lands on which rice is grown as long as those lands are managed as ricelands with the required enhanced wetland values if they otherwise qualify under this chapter and either of the following conditions exist:

(1) The lands are lands on which rice was grown after January 1, 1996. For purposes of this paragraph, to qualify as new wetland values, rice shall not have been grown on the lands for 10 years before the application is submitted pursuant to Section 1785.

(2) The lands are lands on which rice was grown before January 1, 1996. These lands shall qualify only if there is an increase in wetland habitat value that is equal to the site being mitigated. For purposes



of this paragraph, a wetland value shall only be provided for lands on which rice was grown that are proposed for wetlands mitigation for the period when that land is flooded between the harvesting of rice and the planting of the next crop. This paragraph shall apply only to lands that were not flooded after harvest between January 1, 1982, and January 1, 1992.

(d) Any mitigation site established pursuant to subdivision (c) may be replaced by a new site of an equal wetland value.

(e) This section shall not be construed to permit waters used to flood rice fields in order to create wetlands mitigation to be credited as beneficial to wildlife under federal law.

SEC. 3. Article 8.5 (commencing with Section 560) is added to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 8.5. The Cannella Environmental Farming Act of 1995

560. This article shall be known as the Cannella Environmental Farming Act of 1995.

561. The Legislature finds and declares the following:

(a) California agriculture helps to feed the world and fuel our economy. Agriculture provides one out of every 10 jobs in California, and our state has led the nation in total farm production every year since 1948. During 1993, California's 76,000 farms generated nearly \$20 billion in cash receipts and another \$70 billion in economic activity.

(b) Many farmers engage in practices that contribute to the well-being of ecosystems, air quality, and wildlife and their habitat. Agriculture plays a pivotal role in preserving open space that is vital to the environment. Seventy-five percent of the nation's wildlife live on farms and ranches. Freshwater streams and stockponds on farms and ranches provide habitat to millions of fish. Corn, wheat, rice, and other field crops provide bountiful food and habitat for deer, antelope, ducks, geese, and other wildlife.

(c) Environmental laws should be based on the best scientific evidence gathered from public and private sources.

(d) Best scientific evidence should include the net environmental impact provided by agriculture.

(e) Additional research is necessary to adequately inventory the impact that agriculture has on the environment. Recognition should be afforded to agricultural activities that produce a net benefit for the environment, which is consistent with the growing trend of providing incentives for the private sector to undertake economic activities that benefit the environment.

564. Unless the context otherwise requires, the following definitions govern the construction of this article:



(a) “Agricultural activities” means those activities that generate products as specified in Section 54004.

(b) “Department” means the Department of Food and Agriculture.

(c) “Panel” means the Scientific Advisory Panel on Environmental Farming.

(d) “Secretary” means the Secretary of Food and Agriculture.

566. (a) The department shall establish and oversee an environmental farming program. The program shall provide incentives to farmers whose practices promote the well-being of ecosystems, air quality, and wildlife and their habitat.

(b) The department may assist in the compilation of scientific evidence from public and private sources, including the scientific community, industry, conservation organizations, and federal, state, and local agencies identifying the net environmental impacts that agriculture creates for the environment. The department shall serve as the depository of this information and provide it to federal, state, and local governments, as needed.

(c) The department shall conduct the activities specified in this article with existing resources, to the extent they are available.

568. (a) The secretary shall convene a five-member Scientific Advisory Panel on Environmental Farming to advise and assist federal, state, and local government agencies on issues relating to air, water, and wildlife habitat to do the following:

(1) Review data on the impact that agriculture has on the environment and recommend to appropriate state agencies data that the panel approves as scientifically valid. A state agency that receives data recommended by the panel may adopt and incorporate the data into the appropriate program. If a state agency does not utilize the data recommended by the panel, it shall provide the panel with a written statement of reasons for not utilizing the data. The reasons, at a minimum, shall specify the scientific basis for not utilizing the data. The reasons shall be provided within 180 days of receiving the data from the panel.

(2) Compile the net environmental impacts that agriculture creates for the environment, identified pursuant to paragraph (1).

(3) Research, review, and comment on data upon which proposed environmental policies and regulatory programs are based to ensure that the environmental impacts of agricultural activities are accurately portrayed and to identify incentives that may be provided to encourage agricultural practices with environmental benefits.

(4) Assist government agencies to incorporate benefits identified pursuant to paragraph (1) into environmental regulatory programs.

(b) Members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research. Of the members first appointed to the panel, two shall serve for a term of two years and three shall serve for a term of three years, as



determined by lot. Thereafter, members shall be appointed for a term of three years. The members shall be appointed as follows:

(1) Three members shall be appointed by the secretary. At least one of these members shall have a minimum of five years of training and experience in the field of agriculture and shall represent production agriculture.

(2) One member, who has a minimum of five years of training and experience in the field of human health or environmental science, shall be appointed by the Secretary of the Environmental Protection Agency.

(3) One member, who has a minimum of five years of training and experience in the field of resource management, shall be appointed by the Secretary of the Resources Agency.

(c) The panel may establish ad hoc committees, which may include professionals or scientists, to assist it in performing its functions.

(d) The panel shall be created and maintained with funds made available from existing resources within the department to the extent they are available.

